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SUPREME COURT OF THE UNITED STATES.

No. 70.

EDMUND P. GAINES & WIFE, COMPLAINANTS,

vs.

BEVERLY CHEW, RICHARD RELF, & OTHERS.

CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT, U. S. FOR E. LOUISIANA.

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Langtree & O'Sullivan, Print.—1840.

GAINES and WIFE,
vs.
CHEW, and al. } In Equity.

Before the Hon. Sam'l H. Harper.

To the honorable the district court of the United States for the eastern district of Louisiana:

Humbly complaining, your orator and oratrix, William Wallace Whitney and Myra Clark Whitney, his wife, citizens of the State of New York, show unto this honorable court that Daniel Clark, late of the city of New Orleans, in the State of Louisiana, and father of your oratrix, the said Myra, was at the time of making his last will hereinafter mentioned, and at his death, seized in fee simple, or otherwise well entitled to and lawfully possessed of, in the said eastern district of Louisiana, divers freehold messuages, plantations, lands, tenements, hereditaments, and premises, and particularly of the plantations, lands and premises hereinafter enumerated, and situate, bounded and described, as follows, that is to say:

1st. One valuable plantation, parcel, or tract of land, situated in the parish of in the 1st district in the State of Louisiana, about five leagues above the city of New Orleans, on the left bank of the Mississippi river, and bounded on the upper side by lands owned or possessed in the month of October, 1813, by one William Kenner, and on the lower side by lands which were owned or possessed in said October, 1813, by Jacques Fortier, and extending in front, on the said river Mississippi, twenty-four and one half arpents, and extending in depth on both sides to lake Ponchartrain, with all the buildings, tenements, hereditaments and appurtenances thereunto belonging, or are in any wise appertaining, being the same plantation, piece, or parcel of land which was purchased by the said Daniel Clark, in his life time, of one Stephen Henderson the sum of one hundred and twenty thousand dollars.

2d. A tract, portion, or square of land, situated in the suburb St. Mary, of the said city of New Orleans, being the square of ground in said suburb, bounded on the one side by Phillippa street, on the second side by Poydras street, on the third side by Circus street, and on the fourth side by Perdido street, and measuring on Phillippa street three hundred and eighteen feet more or less, on Poydras street one hundred and seventy-nine feet and six inches more or less, on Circus street three hundred and forty-six feet more or less, and on Perdido street two hundred and eleven feet six inches, be the same more or less, together with all the buildings, tenements, hereditaments, appurtenances thereunto belonging, or in any wise appertaining.

3d. A piece, parcel, or tract of land with all the buildings, tenements, hereditaments and appurtenances thereunto belonging, situate in the parish of New Orleans, on the right hand side of the Gentilly road on going to-

wards Gentilly from the city of New Orleans, and in the neighborhood of said Gentilly, and being about twenty-two arpents in front on said Gentilly road, and possessing depth and extending back from said road according to a plan of said piece, parcel, or tract of land deposited in the office of Savinier Blanc, notary public, in and for the parish and city of New Orleans, by Richard Relf and Beverly Chew, by act dated the 27th day of December, 1820.

4th. A piece, or parcel of land with the buildings, tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, situate in the city of New Orleans, and being known and distinguished as lots number one hundred and eighty-four, and one hundred and eighty-six, in Royal street in said city, being the same lot of land and buildings which were sold and conveyed together with other property to said Daniel Clark, by James Pitot, by act of sale before Peter Pedesclaux, notary public, on the 24th day of February, 1813, measuring thirty feet in front on said Royal street, and one hundred and twenty feet in depth, and bounded on one side by property which in said month of February, 1813, was owned or possessed by Madame Widow Lanties, and on the other side, by property which in said month of February was owned by Messrs. Grandchamp and Monnier.

5th. Three lots of land adjoining together and forming but one piece or parcel of land, and each lot being about sixty feet front, and one hundred and twenty feet deep, and situated on the southerly corner formed by the intersection of Toulouse and Burgundy streets, of the square of ground in the said city of New Orleans which is bounded and enclosed on one side by said Toulouse street, on the second side by Rampart street, on the third side by Saint Peter street, and on the fourth side by said Burgundy street, together with all the tenements, hereditaments thereunto belonging, or in any wise appertaining; the said three lots of land which form together as aforesaid but one piece or parcel of land, being the same that were sold and conveyed together, with other property, to said Daniel Clark, by the aforesaid James Pitot, by act of sale, passed before Pierre Pedesclaux, on February 24th, 1813, and are known and designated on a map, or plan of the square, formerly the old burying ground, and included as aforesaid between Toulouse, Rampart, St. Peter and Burgundy streets, drawn by Carlos Trudeau, dated June 11th, 1801, and deposited in the office of P. Pedesclaux, notary public, as lots No. 1, 2, and 12, said No. 1 forming the said corner of Toulouse and Burgundy streets, and measuring sixty feet four inches in front on Burgundy street, and 120 feet deep.

6th. A piece, parcel, or tract of land, situated in the quarter of the Bayou St. John, in the said parish of New Orleans, containing about one hundred and thirty-five arpents, and adjoining the road of the canal Carondalet and the land of E. Conchieux; running thence, along Broad street to Bellechasse street of the Fauxbourg St. John, and land which in the month of October, 1821, was owned or possessed by Mrs. Herry; thence to the land of Evariste Blanc and to the Bayou St. John, in conformity with a plan drawn by Joseph Pilie, dated August 20th, 1821, and annexed to an act of sale of said tract, made by Richard Relf and Beverly Chew to Evariste Blanc, and passed before Philip Pedesclaux on

the 30th day of October, 1821, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining.

7th. A lot of land, with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, situated in the suburb St. John at about half a league from the city of New Orleans, being known and distinguished on a plan of the said suburb made by B. Lafon, dated the 1st day of June, 1809, and deposited in the office of P. Pedesclaux, notary of the said city of New Orleans, as lot No. 3, in the square 23, of the said suburb St. John, being sixty feet in front on Washington street, and about one hundred and twenty feep deep.

8th. Eight lots of land from No. 1 to number 8, both inclusive, forming the square No. 28 of the suburb St. John, in the said city and parish of New Orleans, as the same are laid down and described on the beforementioned plan of the said suburb St. John made by B. Lafon, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining.

9th. A lot of land, situated in the suburb St. John, in the square designated in the abovementioned plan made by B. Lafon, as the square No. 35, being 192 feet in front on Washington street, and sixty-four feet deep, and forming a corner of said square of number 35, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining.

10th. A piece, parcel, tract or square of land in the said suburb St. John, and known and distinguished on the said plan made by the said B. Lafon, as the square No. four, in the said suburb St. John, and measuring two hundred feet in front on said Washington street, three hundred feet in front on St. John street, one hundred and thirty feet front on Broad street, and eighty feet front on place Le Breton, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining.

11th. A plantation or tract of land situated on the right hand bank of the bayou Lafourche, opposite the town of Donaldsonville, and measuring eleven arpents in front on the river Mississippi, and twenty-nine arpents on the said bayou Lafourche, be the same more or less, being the same tract or parcel of land which during the lifetime of the said Daniel Clark, was purchased and held by Wade Hampton, for the said Daniel Clark, and conveyed in February, 1818, by act passed before Charles D
judge of the parish of Ascension, by said Hampton, after the death of said Daniel Clarke to Richard Relf, one of the defendants hereinafter named, who assumed to receive such conveyance as pretended executor of said Daniel Clark, and who subsequently conveyed the said tract or parcel of land to one Bartholemy Lafon.

12th. A tract of land purchased by Daniel Clark of William Simpson, by act passed before P. Pedesclaux, notary public, of the city of New Orleans, on the 5th day of June, 1812, and which is situated in the parish of Ascension and county of Acadia, on the left bank of the river Mississippi, measuring in front on said Mississippi river eighteen and one half arpents, and extending back from said river Mississippi in depth forty arpents, and bounded on the lower side by land which was owned in 1816 by Beverly Chew and Richard Relf, and on the upper side by land

which was sold and conveyed in said year 1816, by Beverly Chew and Richard Relf, to Stephen Henderson and G. N. Destrehan.

13th. A lot, piece, or parcel of land in the city of New Orleans, in the square bounded by Delord street, Tivoli place, Saint Charles street, St. Joseph street, and Camp street, being the lot on the southeasterly corner of said square, which corner is formed by the intersection of the said Camp street and Delord street, in the suburb St. Mary, of the city of New Orleans, and measuring sixty feet French measure on Camp street, and one hundred and twenty feet French measure on Delord street.

14th. The equal undivided half part of a tract of land, situated at Manchac, on the east bank of the river Mississippi, and bounded on the upper side by lands which, in the year 1815, were owned or possessed by the widow Harson, and on the lower side by lands reserved by the Spanish Government for the fort, with all the depth that is expressed or conveyed to the said Daniel Clark, in an act passed before Peter Pedesclaux, of New Orleans, notary public, dated June 23d, 1806, with all the rights, profits, commodities, servitudes, and appurtenances to the same belonging, or in any wise appertaining, being the same that the said Daniel Clark sold and conveyed, in his lifetime, to Celestine Saint M by act passed before John Lynd, notary public, on March 6th, 1811, which act of sale was afterwards, to wit, on the 28th day of May, 1814, rescinded by sentence of the district court of the then third district of Louisiana.

15th. A piece, parcel or tract of land, situated near Duval's plain, about two leagues from the town of Baton Rouge, in Louisiana, containing five hundred arpents, be the same more or less, being the same tract which said Daniel Clark acquired by purchase of Charles Fessin, by an act passed before the parish judge of the parish of Baton Rouge, in the State of Louisiana.

16th. A tract of land containing fourteen thousand and forty-seven arpents, be the same more or less, situate on the east side of the river Comite, nine miles from its confluence with the river Amite, and bounded, in the year 1819, on the north by lands belonging to the said Daniel Clark, on the south by lands granted to Sophia, Josepha, and Rosalia Grandpre, on the east by public land, and on the west by the river Comite, as appears by a certificate and plan or map of survey executed by Don Vincent Sebastien Pintado, and dated October 13th, 1803, and numbered 1649.

17th. A tract of land containing twelve hundred and forty-eight arpents, situated in the district of East Baton Rouge, in the eastern district of Louisiana, six and one quarter miles east of the river Mississippi, and ten miles north, quarter northeast of the fort of Baton Rouge, and bounded in 1819, north and east by public lands, on the south by land granted to John F and on the west by lands of the late John Bretillier and late John Possett, as appears by a certificate and plan of survey executed by said V. S. Pintado, and dated October 9th, 1803, and number 1644.

18th. A tract of land containing four thousand three hundred and sixty-four arpents, situated in the district of Baton Rouge in the said eastern district of Louisiana, on the west side of Sandy Creek, nineteen miles south of the line of demarkation, and bounded in 1819, on the

north and west by public lands, on the south by lands granted to Carlos, and on the east by said creek, as appears by a plan and certificate executed by V. S. Pintado, dated December 23d, 1803, number 1698.

19th. A tract of land three thousand eight hundred and twenty arpents, situated in the said eastern district of Louisiana, on the west side of the river Comite, and fronting thereon, three and one-third miles above Redwood creek, and bounded in 1819, on the north, by vacant lands, on the south by lands granted J. B. Labitut, on the east by the said river Comite, and on the west by land belonging to the estate of the said Daniel Clarke, as appears by a plan and certificate of survey number 1699.

20th. A tract of land containing two thousand five hundred arpents, situated in the eastern district of Louisiana, at the head of Jones creek, six and one quarter miles east, quarter north east from the fort of Baton Rouge, and bounded in 1819, on the north and east by vacant lands, on the south by lands belonging to the said Daniel Clark, as appears by certificate 1700.

21st. A tract of land containing two thousand arpents, situated in the said eastern district of Louisiana, nine and one quarter miles east, quarter, southeast, from the fort of Baton Rouge, and bounded in 1819, on the north, by land of the said Daniel Clark, and on the south, east and west by vacant lands, as appears by a plan of map and certificate of survey No. 1700.

22d. A tract of land containing twenty-one thousand nine hundred and twenty-one arpents, being an undivided part of three tracts, containing fifty-two thousand arpents, situated on the east side of the river Amite, in the said eastern district of Louisiana, the lower line being about eight miles above its confluence with the river Comite, and bounded in 1819, on the north, by land granted to Jerome Lachapelli, on the south by land granted to G. M. Morgan, on the east by vacant lands, and on the west by the river Amite, as appears by the plan or map and certificate of survey of Chas. Trudeau, number 1721, and dated April 17th, 1804.

23d. The equal undivided half part of a tract of land, or plantation, situated in the parish of St. John the Baptist, at about twelve leagues from the city New Orleans, having about ten arpents in front, on the river Mississippi, and forty in depth, and bounded in 1814, on one side by lands owned or possessed by Cambre, and on the other by lands owned or possessed by the widow of James Deslondes.

24th. The equal undivided half part of a plantation or tract of land, in the parish of St. John the Baptist, being about four and one half arpents in front, on the Mississippi river, and bounded, in 1814, on one side by lands owned or possessed by Henry Mores, and on the other by lands owned or possessed by Fife Mores.

25th. A tract of land situated on the left bank of the bayou Lafourche, in the said eastern district of Louisiana, being about six arpents in front, on the said bayou, and bounded in 1819, on both sides, by lands owned or posseesed by Louis Haitier.

26th. A tract of land containing five thousand four hundred and seventy arpents, situated in the said eastern district of Louisiana, on the eastern side of the river Comite, at or about twelve and three-quarter miles from the line that separated the King of Spain's dominions from the American territory, and bounded, in 1813, by the lands surveyed for Don

Manuel Parcia and Juan de Lassize, on the south by lands surveyed for Don Christoval De Armas, east by the said river Comite, and on the west by vacant lands.

And your orator and oratrix also show to this honorable court, that the said Daniel Clark, at the time of making his said last will, and at his death, was also possessed of as owner, interested in, or otherwise well entitled to, a large number of slaves and a considerable personal estate, and particularly to the slaves and personal estate hereinafter enumerated and described, that is to say:

1st. Two hundred and twenty-six slaves, severally named, Will, Lubin, Coke, Solomon, Jacob, John, Jacques, Argen, Jacob, Antoine, David, George, Paul, Adam, Doctor David, Randolph, Etienne, Lubin, Ref, Providence, Lindor, Figuro, Nacisse, Nede, Isaac, Jean, Solomon, Austine, Jones, Gibaud, Wallis, Charles, Jacques, Cordio, Davis, Cardinal, Jerome, L'Ebene, John, Merode, Willis, Moise, Davi, Andre, Dress, Andre, Thomfield, Bobe, Alce, James, Harry, Storder, Arthur, Ledger, Sam, Phœbe, Fanny, Anna, Genevieve, Betty, Polly, with her two children, one named John, and the other suckling, Liza, with her child William, a doctor Negro, Hector, William, Jenvier, Stewart, Jim, Kersey, Manvier, Kett, Brown John, Winy, with her child David, Old Esther, Billy, Hannah, James McCall, Phille, Betsy, with her child Monthson, Easther, Morning, Sam, Old Lett, Grace, Elijah, James, Rose, Hannah, Bird, Patty, Lawrence, Franky, John, Charles, McKensey, Margaret, Fanny, with her child Marie, Nelson, Major, Nanny, with three children, Hellick, Banky, and Maroja, Spender, Thenier, Old Major, Darky, Dorianna, Smith, Cambridge, Rachel, with her child Gabriella, L'Wenny, Sarah, Judich, Polly, Fanny, Mace, Molly, Nancy, Kevy, Jane, Nancy, Washington, Betty, with her child, Tom, Betty, George, Old Rachal, Dinah, Dam, Levy, Anthony, Rachal, Charlotte, Waldrin, Patience, Sukey, Lidley, Mamy Suky, Edmond, Nailey, Betty, Ben, Jenny, Kitly, Henrietta, Bob, Elsy, Betty, Peggy, Hartas, Thomas, Sally, Retti, Anny, William, Ben, Anny, Rasly, Jinny, Jones, Rachal, Jack, Mary, Joe, Suky, Victoire, Joe, Rachal, Peggy, James, Harris, Rachal, George, James, Campaigne, Rose, Aime, Thom, Zazo, Peter, Mary, Duke, Chloe, James, Mary, Kelly, Darkey, Daniel, Louis, Sally, Luke, George, Job, Peggy, Jack, Nathan, Toby, Geoffry, Phil, David, David, James, Shecling, Lucy, Morrow, George, Rose, Rosetta, Hannah, Judick, Kelly, Silva, Ketty, Julia, with her three children named, John, Quacks, and Jenny, Louisa, Little Jim, Jerry, Jobby, Jeffrey, Nancy, Dinah, with her child James, Charlotte, Kitty, Peggy, with her child Jerry, Arthur, Sally, Rady, Rachel, Rachal, as the said two hundred and twenty-six slaves, are enumerated and described in a document purporting to be an inventory of the property of the said Daniel Clark's succession, deposited in the probate court, in and for the parish and city of New Orleans.

2d. Cows, oxen, mules, and other animals, furniture and other articles of domestic use, books, shrubs and flowers, used and possessed during his lifetime, by the said Daniel Clark, at or immediately in the vicinity of his dwelling or domicil, in the suburb St. John, of the city of New Orleans, and which were of the value of four thousand and forty-four dollars and upwards. And also certain other furniture, articles of domestic

use, gardening tools, implements of husbandry, horses, oxen, mules, and other animals of the value of three thousand eight hundred and seventy-three dollars and upwards, which were owned and employed by the said Daniel Clark during his lifetime, upon the said plantation hereinbefore described, as purchased by him from Stephen Henderson, and also certain debts and demands against several individuals, and amongst others, the following:

1st. A debt of sixteen thousand dollars due to the said Daniel Clark by Zenon Cavalier and Louis de Feriet, and secured by mortgage, being the purchase money of a plantation situate on the road of the Meterie, at the distance of one league and a half from New Orleans, sold to said Cavalier and de Feriet by said Daniel Clark, by act before Peter Pedesclaux, dated January 20th, 1812.

2d. A debt of fifteen hundred dollars and upwards, due from David Porter to the said Daniel Clark.

3d. A debt of ten thousand dollars and upwards, secured by mortgage, and due to the said Daniel Clark from David Urquhart, David Williams, and James Williams, for a tract of land sold to them by the said Daniel Clark, by act passed before Peter Pedesclaux, on the 16th day of March, 1812.

4th. Certain debts amounting, in all, as nearly as your orator and oratrix are able to calculate the same, to the sum of eighty-five thousand four hundred and thirty-eight dollars and forty-one cents, as the same are specified in the document hereinbefore referred to as purporting to be an inventory of the estate of the said Daniel Clark, and to which document your orator and oratrix for greater certainty here crave leave to refer, whenever and as often as it may be necessary for them so to do.

And your orator and oratrix also show that the said Daniel Clark at the time of making his last will, hereinafter mentioned, and at his death, was entitled, (amongst other property,) to certain property, debts and demands which are enumerated in a schedule of debts and property made and filed by Richard Relf and Beverly Chew, in the probate court for the parish and city of New Orleans, on the third day of March, 1814, the whole amount of the said schedule of debts and property being, as nearly as your orator and oratrix have been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate belonging to the said Daniel Clark, specified and set down in said schedule, at the value of three hundred and forty-four thousand dollars; and your orator and oratrix expressly charge that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents, was belonging, and the property of the said Daniel Clark, at the time of his, the said Daniel Clark's death.

And your orator and oratrix further show unto this honorable court, and expressly charge that previous to the death of the said Daniel Clark, it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave, at his decease, all his property and estate, real and personal, to your oratrix, the said Myra Clark Whitney; that in order more effectually to secure the fulfilment of said intention and desire the said Daniel Clark did, in or about the month of July, in

the year 1813, duly make and execute his last will and testament according to law, having wholly written and signed the same with his own hand, and did, in and by the said will, declare your oratrix, the said Myra Clark Whitney, to be his legitimate child; and the said Daniel Clark did also, in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark Whitney, all his, the said Daniel Clark's property and estate, real and personal, and did name therein, as the executors of the said will, Colonel Joseph Deville Degontin Bellechasse, James Pitot, and Chevalier Dusnau de la Croix, appointing the Chevalier de la Croix tutor also of your oratrix, the said Myra Clark Whitney, your oratrix being then an infant under the age of twenty-one years, to wit, of the age of seven years.

And your orator and oratrix further show unto this honorable court that the said will did also contain some bequests to friends, amongst which bequests were a legacy or annuity of two thousand dollars per annum to be paid to Mary Clark, the mother of the said Daniel Clark, during the lifetime of the said Mary Clark; an annuity of five hundred dollars to be paid yearly to one Caroline DeGrange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of dollars should be paid to her, and also a bequest of thousand dollars to be paid to the son of the said Judge James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix.

And your orator and oratrix further show unto this honorable court, and expressly charge that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by the said Judge James Pitot, the late John Lynd, notary public, in and for the parish and city of New Orleans, Mrs. Harriet Smith, and others, and that the said will was also shown, and its contents communicated by the said Daniel Clark to the said Colonel Bellechasse, Chevalier de la Croix, Mr. Pierre Baron Boisfontaine, and others, and that the said David Clark departed this life on or about the 16th day of August, in the year 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark Whitney, his only child or descendant, and the forced or instituted heiress of all his property and estates, real and personal.

And your orator and oratrix further show unto this honorable court, and expressly charge that the said Daniel Clark left, at his decease, no child or descendant, him surviving, except your oratrix, the said Myra Clark Whitney, and that your oratrix, the said Myra Clark Whitney, was and is the lawful and legitimate and only child or descendant of the said Daniel Clark, and entitled as such, by the law of the land, to the possession and inheritance of all the property and estate of the said Daniel Clark, and especially to the property and estate, real and personal, hereinbefore enumerated and described.

And your orator and oratrix further show unto this honorable court, and especially charge that your oratrix, the said Myra Clark Whitney, soon after her birth, which took place in the month of July, 1806, was placed

by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live, at New Orleans, until the year 1812, when the said Samuel B. Davis removed, to live, to the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis' family until the time of the death of the said Daniel Clark, and afterwards; and that during the lifetime of the said Daniel Clark, he, the said Daniel Clark continued to exercise the authority, care and protection of a parent in regard to your oratrix, the said Myra Clark Whitney.

And your orator and oratrix further show unto this honorable court that in or about the month of May, in the year 1811, the said Daniel Clark was led to believe that one Daniel W. Coxe, of Philadelphia, with whom he had previously had some connexion in business, had by imprudence or misconduct involved him, the said Daniel Clark, in some serious pecuniary and commercial difficulties and embarrassments; that immediately thereupon the said Daniel Clark deemed it advisable to proceed forthwith to Philadelphia, in order to attend personally to the settlement of the difficulties which it was represented to him existed; that preparatory to his undertaking the voyage from New Orleans to Philadelphia for the purposes aforesaid, and in or about the month of May, 1811, he, the said Daniel Clark, conveyed property to Samuel B. Davis, and others, to the amount of several hundred thousand dollars, to be held in trust by them for your oratrix, and then at or about the said time there made a will devising briefly, and in general terms, his property to his mother, Mary Clark, then residing out of the State of Louisiana, and also appointing Richard Relf and Beverly Chew, two of the defendants herein, the executors thereof.

And your orator and oratrix further show that the said Daniel Clark, in or about the said month of July, 1811, proceeded to Philadelphia, and returned again in a few months thereafter, and in the same year, to New Orleans; that the said Daniel Clark had ascertained at Philadelphia, upon his having proceeded thither, as aforesaid, that his interests had not been so seriously jeopardized by the said Daniel W. Coxe as he had been led to believe, as above stated, previous to his having gone there; that he did therefore upon his said return to New Orleans receive back some portions of the property which he had conveyed, as aforesaid, in trust for your oratrix, the said Myra, which, under the above mentioned erroneous belief respecting the supposed difficulties in which the said Coxe was alleged to have involved him; and that upon his said return to New Orleans, and upon his having ascertained, as aforesaid, the groundlessness of the apprehension which had been excited in his mind relative to the consequences that might result to himself from the transactions of the said Daniel W. Coxe, he, the said Daniel Clark, did also declare that he no longer intended that the said will made in 1811 should be his last will; that he had made it while laboring under false impressions, and only provisionally, and that he should revoke the said will of 1811, and make and execute another will, devising and bequeathing all his estate, real and personal, to your oratrix, the said Myra Clark Whitney; and your orator and oratrix shew unto this honorable court, and expressly charge that the said

Daniel Clark did revoke the said will made in 1811, as aforesaid, and did, after the making and execution of the said will of 1811, duly make and execute in the year 1813, and but a short time before his death, as your orator and oratrix have herein before set forth, his, the said Daniel Clark's last will and testament, devising and bequeathing thereby to your oratrix, the said Myra Clark Whitney, all the real and personal estate of him, the said Daniel Clark, and declaring your oratrix, the said Myra, to be the legitimate child of him, the said Daniel Clark, as your orator and oratrix have herein before more particularly stated; and that the said Daniel Clark did upon his death-bed, and unto the very moment of his decease, continue to declare that the aforesaid will made by him in the year 1813, devising all his property as aforesaid, to your oratrix, the said Myra, was his last will and testament, and was then contained in a black case in his office room, in the house in which he was at the time, and in which he died almost at the moment of making the said declarations in favor of your oratrix, the said Myra.

And your orator and oratrix further show unto this honorable court that the said Daniel Clark, upon making the said will of 1811, delivered it to the said Richard Relf and Beverly Chew, or one of them, and allowed it to remain in their keeping from thenceforth; that the said Daniel Clark was very extensively engaged in mercantile and other business and speculations, and possessed a vast amount of property, and that the said Richard Relf acted as his agent in relation to many of the transactions and affairs in which, he, the said Daniel Clark, was engaged; that at and immediately before the time of the death of the said Daniel Clark, the said Richard Relf assumed to direct the domestic arrangements of the said Daniel Clark, and attended, during the last illness of the said Daniel Clark, at his, the said Daniel Clark's dwelling house, and took upon himself the sole control of the household and the affairs of the said Daniel Clark; and that instantly upon the death of the said Daniel Clark, all the books, papers, letters, documents, and all deeds and writings of what nature soever, belonging to the said Daniel Clark, came into the sole possession of him, the said Richard Relf.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said will of 1813 made by the said Daniel Clark in favor of the said Myra came into the possession of the said Richard Relf, immediately upon the death of the said Daniel Clark, and that the said Richard Relf fraudulently concealed, suppressed or destroyed the same, or caused it to be concealed, suppressed, or destroyed, and did substitute in its place, or stead, the said old revoked will of 1811, in which he, the said Richard Relf, was named an executor, and that the said last will of 1813 was never seen by any one after the death of the said Daniel Clark, except by the said Richard Relf, and Beverly Chew, and their confederates.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said Richard Relf did fraudulently cause the said old revoked will, made in 1811, to be admitted to probate in the probate court, for the parish and city of New Orleans, and procured himself, the said Richard Relf, to be sworn and authorised by the said probate court, as the testamentary executor of the said Daniel Clark.

And your orator and oratrix also show unto this honorable court, that the said Beverly Chew did, also, soon after the death of the said Daniel Clark, to wit, in the month of January, 1814, procure himself to be sworn and authorised by the said court of probates, for the parish and city of New Orleans, to act as testamentary executor of the said Daniel Clark, under the said revoked will of 1811.

And your orator and oratrix show further unto this honorable court, that when the said Richard Relf and Beverly Chew took upon themselves the office of testamentary executors of the said Daniel Clark, as aforesaid, there was no relative or any person claiming to be heir of the said Daniel Clark, in the State of Louisiana; that your oratrix was then an infant under the age of seven years, and resided at that time in the city of Philadelphia, in the State of Pennsylvania, with the family of the said Samuel B. Davis, and that Mary Clark, the mother of the said Daniel Clark, who was named as aforesaid devisee of the said Daniel Clark, in the said old revoked will of 1811, was also then a resident of the State of Pennsylvania, and continued to reside there until her death, which happened some years after the death of the said Daniel Clark; that the said Daniel Clark was a native of Ireland, from which country he emigrated to Louisiana, as your orator and oratrix have been informed, and verily believe, in or about the year 17 , and that all his immediate relatives and family resided at the time of his death, either in Ireland or in the State of Pennsylvania, and that none of them ever visited Louisiana, until many years after his death; that the said Richard Relf and Beverly Chew fraudulently possessed themselves, immediately after the death of the said Daniel Clark, of the personal estate, effects, and credits, of the said Daniel Clark, to a great amount, and also entered into possession of the real estates of the said Daniel Clark, and into the receipts of the rents and profits thereof, by falsely and fraudulently representing the said estate to be insolvent, and by other fraudulent means continued, and were enabled to continue, and have ever since continued, and now are in such possession, or in possession of a large portion thereof; and your orator and oratrix also show that the said Richard Relf and Beverly Chew made sales of the property and effects, real and personal, of the said Daniel Clark, and have received very large sums of money, amounting to several hundreds of thousands of dollars, from the said estate, real and personal, and have retained in their hands or otherwise appropriated or disposed of the same for their own uses and purposes, and that in all such actings and doings, and in all the matters relating to the said estate, they, the said Richard Relf and Beverly Chew, have acted fraudulently and without the knowledge, consent, or approbation, of your orator and oratrix, or of either of them, or of any other person or persons having a right, or being duly or legally authorized, to sanction, consent to, or approve of the same.

And your orator and oratrix further show unto this honorable court, that from and after the time of the death of the said Daniel Clark, and until about the year 1832, when your oratrix, the said Myra Clark Whitney, became the wife of your *your* orator, the said William Wallace Whitney, your oratrix, the said Myra, continued to reside in the family of the said Samuel B. Davis, who lived, during all or nearly all that time,

in the State of Pennsylvania; and your orator and oratrix also show, and expressly charge, that during the lifetime of the said Daniel Clark, the father of your oratrix, the said Myra, your oratrix was always known and called by her true and rightful name of Myra Clark, and by no other name; and that from and after the death of the said Daniel Clark, until at or about the time of the marriage of your oratrix, the said Myra, with your orator the said William Wallace Whitney, your oratrix, the said Myra, was designated and called in the family of the said Samuel B. Davis, by the name of Myra Davis, and by no other name, and was kept in ignorance of her real name, parentage, and true history, and of her rights and her title to the inheritance and possession of the estate of the said Daniel Clark, and was consequently unable, during all that time, to take the necessary measures for asserting her title to the said inheritance of her father, the said Daniel Clark; that at or about the time of the marriage of your oratrix, the said Myra, with your orator the said William Wallace Whitney, your oratrix was brought by accident to the discovery of her true name and parentage, and was subsequently made more fully acquainted with the circumstances of her history and rights by the said Samuel B. Davis and others; and that your orator and oratrix have ever since the time of the said marriage of your oratrix with your orator, been and are now actively engaged in endeavors to establish the legal rights and claims of your oratrix, the said Myra, to the property and estate, real and personal, of the said Daniel Clark.

And your orator and oratrix further show to this honorable court, that the said Mary Clark died in the year 18 , as your orator and oratrix are informed and verily believe, and that as your orator and oratrix have been informed and verily believe, the next heirs and relatives left by the said Mary Clark survived her at her disease, were, besides your oratrix, the said Myra, Eleanor O'Barne, a daughter of the said Mary Clark, Jane Green, wife of George Green, and daughter of said Mary Clark, and Sarah Campbell, a grand daughter of the said Mary Clark.

And your orator and oratrix show further unto this honorable court, that Mrs. Widow Holliday, and John Holliday, now occupy and possess or claim to hold as owners, or otherwise, the first above described enumerated piece, parcel, or tract, of land, or plantation, purchased by the said Daniel Clark of one Stephen Henderson, for $120,000; that Ramon Masana, Jean B. Ambroise, John Minturn, Belifin Berdoule, Manuel Marquez, John Mathieu, Thos. D. Hailes, Mr. Callaway, Jean Baribino, Antoine Piernas, the New Orleans and Carrollton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, and Charles Fonde, each claims to hold severally as owner or otherwise, some portion, piece, or parcel, of the second above described and enumerated tract, portion, or square, of land situated in the suburb St. Mary, of the city of New Orleans, and bounded on the one side by Phillippa street, on the second side by Poydras street, on the third side by Circus street, and on the fourth by Perdido street; and the said Ramon Masana, Jean B. Ambroise, Jean Mathieu, Antoine Piernas, Mrs. Widow Jaubert, and Charles Patterson, and also Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Guichanette, Patrick Hogan, J. B, Barker, Jane McCrea, Marie Louise, and Charles Edwards,

are in the actual possession and occupation of the said second above described and enumerated tract, portion, or square, of land, bounded as aforesaid by Phillippa, Poydras, Circus, and Perdido streets.

And your orator and oratrix further show that Francois Xavier Martin, and J. Hopkins, each claims to hold severally as owner, or otherwise, some portion, piece, or parcel, of the third above described and enumerated piece, parcel, or tract, of land situated in the parish of New Orleans, on the right hand side of the Gentilly road on going towards Gentilly, from the city of New Orleans, being twenty-two arpens in front (more or less) on the said Gentilly road, and that M. Binge occupies or possesses some portion, piece, or parcel thereof; that Réné Lemonier occupies and possesses and claims to hold, as owner or otherwise, the fourth above described and enumerated lot of land, with the buildings and tenements thereunto belonging, known and distinguished as lots, numbers 184 and 186 in Royal street, in the city of New Orleans; that F. H. Petitpain and Toledano claim to hold, severally or jointly, as owners or otherwise, some piece or portion of the fifth above described and enumerated three lots of land, adjoining together and forming but one piece or parcel of land on the southerly corner of the square of ground in the city of New Orleans, bounded by Toulouse, Rempart, and St. Peter, and Burgundy streets, and each lot being about sixty feet front and one hundred and twenty feet deep; and that Etienne Cusin, J. H. Field, P. O. Sorbe, Claude Samory, and Toledano, severally occupy and possess the same. And your orator and oratrix also show that the mayor, aldermen, and inhabitants of the city of New Orleans, claim to hold, as owners or otherwise, the sixth above described and enumerated piece, parcel, or tract, of land situated in the quarter of the bayou St. John, and containing about one hundred and thirty-five arpens superficial measure, be the same more or less; that Augustus Pepie, and one Wright, occupy and possess jointly and severally, as owners or otherwise, the tenth above described and enumerated piece, parcel, or square, of land in the suburb St. John, of the city of New Orleans, known and designated as square No. 4, on the said plan of the said suburb. And your orator and oratrix further show that Gabriel Winter occupies and claims to hold, as owner or otherwise, the eleventh above described and enumerated plantation or tract of land situated on the right bank of the bayou Lafourche, opposite the town of Donaldsonville, and measuring eleven arpens in front on the river Mississippi, and twenty-nine arpens on the said bayou Lafourche, be the same more or less; that Philiph Miner, George Kenner, and Duncan Kenner, claim to hold and to be entitled to, as joint or several owners or otherwise, the above twelfth described and enumerated tract of land purchased by the said Daniel Clark of William Simpson, as hereinbefore stated, and which is situated in the parish of Ascension, and county of Acadie, on the left bank of the Mississippi, measuring in front on said Mississippi river, eighteen and one half arpens, and extending back from said Mississippi, in depth forty arpens, and that the said George Kenner and Duncan Kenner occupy the same. And also that Leland Ferier occupies and possesses, and claims to hold as owner or otherwise, the thirteenth above described and enumerated lot, piece, or parcel, of land in the city of New Orleans, in the square bounded by Delord street, Tivoli place, St. Charles Street, St. Joseph street, and Camp street.

And your orator and oratrix also show unto this honorable court, that Francois Dusuau de la Croix, on or about the 11th day of October, 1813, being after the death of the said Daniel Clark, took possession of and has ever since held and retained, or disposed of, for his own use and benefit, the following named twenty slaves, the property of the said Daniel Clark, and has enjoyed the profits and services of the same, that is to say, the slaves named Meroke, Phœbe, Flibo, Thom, John Jamboun, Fanny, Wallace, Levin, John, Wury, Esther, James McCall, Hannah, Phil, Betsy, Monsin, Esther Morning, Cambridge, Rachel; and that the said Francois Dusuau de la Croix did also, on or about the 11th day of December, 1813, take possession of, and has ever since held, and retained and has enjoyed the services and profits, or has disposed of, for his own use and benefit, the following named fifty-five slaves, that is to say, Solomon, a negro man, aged 40 years, Jacob 25 years, Jacques 18 years, Paul 22 years, Randolph 30 years, Ned 30 years, Isaac 20 years, Austin 25 years, Janin 16 years, Charles 35 years, Davis 20 years, Brice 40 years, Tom 35 years, Bob 26 years, Haly 30 years, Harry 15 years, Coxe 40 years, Sam 40 years, Janvier 40 years, Rose 25 years, Peter 45 years, Chloe 30 years, Morrow 35 years, George 10 years, Sam 40 years, Gian 10 years, Elisha 18 years, Spencer 44 years, Theimar 25 years, Betty 26 years, George, mulatto, 30 years, Dorianna Smith 16 years, little Winny 20 years, Judith 25 years, Darse or Dive 5 years, Ben 26 years, Jack 25 years, Mary 30 years, Joe 15 years, Sukey 12 years, Victoire 10 years, Joe 13 years, Davis 30 years, John Harrod 25 years, Wallis 30 years, Andre 40 years, Squire child, Tom child, Davis child, Ann child, Gabrial and George 10 years.

And your oratrix further show unto this honorable court, that Celestin Robert Avart, soon after the time of the death of the said Daniel Clark, and on or about the 8th day of October, 1813, took possession of and has ever since held and retained or disposed of for his own use and benefit of the following named five slaves, owned by the said Daniel Clark, and has enjoyed the services and profits of the same, that is to say, the slave Molly aged 46 years, Nancy aged 28 years, Kery aged 12 years, Tom aged 8 years, and Isaac aged 22 years; that L. Fortier, soon after the death of the said Daniel Clark, and on or about the 11th day of October, 1813, took possession of, and has ever since held and enjoyed the services and profits of, or disposed of, for his own use and benefit, a slave owned by the said Daniel Clark, and named Patience; that Francois Pascalis Labarre, on or about the 11th day of October, 1813, took possession of, and has ever since held, and retained, and received, and enjoyed, the services and profits of, or disposed of, for his own use and benefit, two slaves owned by the said Daniel Clark, named Sally, aged 16 years, and Betty aged 15 years; that Soniat Dufussat, on or about the 18th day of October, 1813, took possession of, and has ever since held and retained, and received, and enjoyed, the services and profits of, or disposed of, for his own use and benefit, six slaves owned by the said Daniel Clark, and named Sam Harris, aged 26 years, Rachel 25 years, George 8 years, James 6 years, Champion 1 year, and Fanny 22 years; that Louis Desdunes, fils, on or about the 21st day of October, 1813, took possession of, and has ever since held and retained, and received, and enjoyed, the

profits and services of, or disposed of, for his own use and benefit, one slave, the property of the said Daniel Clark, named , and aged 16 years; that Herbert Fortier, on or about the 23d day of October, 1813, took possession of, and has ever since held and retained, and received, and enjoyed, the services and profits of, or disposed of, for his own use and benefit, three slaves, the property of the said Daniel Clark, and named Jenny, aged 26 years, Kitty aged 5 years, and Henrietta aged 8 years; and your orator and oratrix show unto this honorable court, and expressly charge, that the said last named ninety-one slaves were the sole and absolute property of the said Daniel Clark, and were owned by him at the time of his decease.

And your orator and oratrix also show unto this honorable court and, expressly charge that the said Mrs. Holliday, John Holliday, Jane B. Ambroise, Ramon Masona, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Calloway, Jean Barabino, Antoine Piernas, The New Orleans and Carrolton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Cartano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francois Dusuau de la Croix, Celestine Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufussat, Louis Desdunes, fils, and Hobert Fortier, do each respectively hold, occupy, possess or claim to the several plantations, lots, pieces or parcels of land, slaves and personal estate by them respectively held, occupied, possessed or claimed, as your orator and oratrix have hereinbefore set forth, by, under color (and not otherwise) of a pretended title founded upon divers illegal, fraudulent, improper and invalid sales of the said plantations, lots, pieces or parcels of land, slaves and personal estate, by them or each of them respectively held, occupied, possessed or claimed as aforesaid, made by the said Richard Relf and Beverly Chew, or one of them, as pretended executors of the said Daniel Clark, or pretended attorneys of the said Mary Clark or otherwise, and that they have severally enjoyed or received for a long space of time the rents, services, profits, and issues of the said plantations, lots, pieces or parcels of land, slaves and personal property by them and each of them respectively held, occupied, possessed or claimed as hereinbefore specified.

And your orator and oratrix further show unto this honorable court, and expressly charge that the said Richard Relf and Beverly Chew or one of them, did also immediately upon the death of the said Daniel Clark, possess themselves of all and every of the books and papers of the said Daniel Clark, and of the title deeds of his real estate and other estates.

And your orator and oratrix also show to this honorable court and expressly charge, that your oratrix, the said Myra Clark Whitney, was the only surviving child or descendant of the said Daniel Clark at the time of his death, and that your oratrix, the said Myra Clark Whitney, was,

upon the death of the said Daniel Clark, entitled as his forced heiress at law, and his universal heiress by him instituted and appointed in his said last will, made by him in 1813, to all the estate, real and personal, of the said Daniel Clark; and your orator and oratrix also show unto this honorable court, and expressly charge, that inasmuch as your oratrix, the said Myra, was the only surviving and legitimate child or descendant of the said Daniel Clark, at the time of his, the said Daniel Clark's death; and inasmuch as the said last will of the said Daniel Clark, made by him as aforesaid, in 1813, was fraudulently concealed, suppressed or destroyed by the said Richard Relf, as above stated, and also inasmuch as the said old revoked will of 1811, alleged to have been made by the said Daniel Clark, in favor of his mother, the said Mary Clark, was produced and procured to be admitted to probate as the last will of the said Daniel Clark, by such fraud and practice of the said Richard Relf as is hereinbefore stated; that for, and notwithstanding the same, the said real and personal estate of the said Daniel Clark, hereinbefore described and enumerated, and all other estates, real and personal, moveable and immoveable, of the said Daniel Clark, descended to, and became vested in, your oratrix, the said Myra Clark Whitney, as the forced heiress at law and universal devisee of the said Daniel Clark.

And your orator and oratrix show further unto this honorable court, that they, or some person or persons for them, have made frequent applications to the said Eleanor O'Bearne, Jane Green and her husband, George Green, Sarah Campbell, Richard Relf and Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belefine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrolton Rail Road Company," "the Mayor, Aldermen and inhabitants of the city of New Orleans," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Cartano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francois Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, respectively to surrender and deliver up to your oratrix, the said Myra Clark Whitney, the possession of such portion of the real and personal estate, and slaves owned by the said Daniel Clark at the time of his decease, as is by them or each of them respectively held, occupied, possessed or claimed as owner or otherwise, together with all title, deeds, vouchers and documents relating to the same, or any part thereof, and severally to come to a just and true account with your orator and oratrix, for the rents, profits, issues and services thereof respectively, which have been received or enjoyed by them or either of them, at any time since the death of the said Daniel Clark; with which just and reasonable requests your orator and oratrix had well hoped the said defendants would have respectively complied, as in justice and equity they ought to do.

But now so it is, may it please this honorable court, that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Massana, Jean B. Ambroise, John Minturn, Belafine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Calloway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrolton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fond, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufassat, Louis Desdunes, fils, and Herbert Fortier, and to and with divers other persons, at present unknown to your orator and oratrix, whose names, when discovered, your orator and oratrix pray may be herein inserted, and they made parties defendants hereto, with proper and apt words to charge them with the premises, and contriving how to injure and oppress your orator and oratrix in the premises, sometime give out and pretend that the said Daniel Clark never did make and execute the said will of 1813, in favor of your oratrix, as has been above stated, and that the said old will of 1811 was duly made and executed by the said Daniel Clark, and was left by him at the time of his decease unrevoked, and as his true and only last will and testament; whereas your orator and oratrix expressly charge the contrary of said pretence to be true, and that the said Daniel Clark did make and execute the said will made by him, as hereinbefore stated, in the year 1813, in favor of your oratrix, and did therein devise and bequeath all his estate, real and personal, to your oratrix, the said Myra Clark Whitney, and did also therein and thereby declare your oratrix, the said Myra Clark Whitney, to be the legitimate daughter of the said Daniel Clark, and did make and order therein the other dispositions and bequests hereinbefore stated by your orator and oratrix, to have been made and ordered by him in the said will, made and executed as aforesaid, in 1813, by him the said Daniel Clark; and the said will of 1813 operated as a full and perfect revocation of the former will alleged to have been made by the said Daniel Clark, in 1811, and of every part and provision thereof, and that the said will of 1811 ought to be set aside, and the said will of 1813 established and confirmed, and the real and personal estate of the said Daniel Clark declared to be descended to your oratrix, the said Myra Clark Whitney, as the heir at law and devisee of the said Daniel Clark. And at other times the said confederates will allege that some doubts have arisen concerning the legitimacy of your oratrix, the said Myra Clark Whitney, and pretend that the said Daniel Clark was never married to Zuline Née Carriere, by whom he had your oratrix, the said Myra Clark Whitney, and that the said Zuline Née Carriere was the lawful wife of one Jerome De Grange, who was still living, when she became the mother of your oratrix, by the said Daniel Clark; and that

therefore, upon the death of the said Daniel Clark, the equitable and legal interest in all the said real and personal estate and slaves, descended to, and became vested in the said Mary Clark as his forced heir at law: whereas your orator and oratrix expressly charge the contrary of all such pretences and allegations to be true, and that your oratrix, the said Myra Clark Whitney, is, and was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was married to, and was the lawful husband of the said Zuline Née Carrierè, at and before the time when she became the mother of your oratrix, the said Myra, by the said Daniel Clark, and that the said Zuline Née Carriere was not, and never had been at any time the lawful wife of the said Jerome De Grange, or of any other man than the said Daniel Clark, when she became the mother of your oratrix, the said Myra as aforesaid, and that any marriage ever did take place between the said Zuline and the said De Grange, the same was utterly null and void from the beginning, on the ground that the said Jerome De Grange, at the time of his contracting such marriage (if he did contract the same) with the said Zuline, was the lawful wedded husband of another woman, to whom he had been previously married, and who was still living, all of which the said confederates will at other times admit. But then they pretend that the said Richard Relf and Beverly Chew made sales of the said real and personal estate, and the said slaves of the said Daniel Clark, as testamentary executors of a will of the said Daniel Clark, which had been admitted to probate in the probate court, for the parish and city of New Orleans, and as the attorneys in fact of the said Mary Clark, the devisee in said probated will named, and that the purchasers of the said real and personal estate of the said Daniel Clark at the said sales thereof did become such purchasers for full and valuable considerations, and without notice of any revocation and invalidity of the said probated will, alleged to have been made by the said Daniel Clark in 1811, and in which the said Richard Relf and Beverly Chew were named executors, and without notice of the rights or claims of any other person than the said Mary Clark to the said estate of the said Daniel Clark, or any part thereof; and therefore they insist that although the said will of 1811 may not have been the last will of the said Daniel Clark, and although your oratrix, the said Myra, may have been the true and lawful heiress of the said Daniel Clark, yet they should not be affected thereby; and that the titles acquired by the said purchasers, under the said sales made of the said real and personal estate and slaves of the said Daniel Clark, by the said Richard Relf and Beverly Chew, are good and perfect titles, and cannot be invalidated or disturbed in any manner by the revocation or invalidity of the said will of 1811, or of any claim or claims, or title, which your said oratrix, the said Myra, may have had or now has to the said estate and slaves, or any portion thereof; whereas your orator and otratrix expressly charge the contrary of all auch pretences to be true, and that the said Richard Relf and Beverly Chew did not, nor did either of them, act in their said assumed capacities of pretended executors of a will of the said Daniel Clark, and attorneys of the said Myra Clark, legally, nor did they, or either of them, when acting in both or either of such assumed capacities, observe or comply with the formalities, or adopt the measures prescribed by law as requisite to give any validity or authority to any acts or act done or assumed to be done by

them in such assumed capacities of executors or attorneys, in relation to the said real and personal estate and slaves of the said Daniel Clark; that a true and faithful inventory and a just appraisement, by two duly appointed and sworn appraisers of the said real and personal estate of the said Daniel Clark, had not been made, or caused to be made, according to law, by the said Richard Relf and Beverly Chew, or either of them, before the said sales were made; that proper and legal orders to sell were not obtained by the said Richard Relf and Beverly Chew, or either of them, from the judge authorised to grant or make such orders before the said sales were made; that all or nearly all the said sales were made by private contract, and not at public auction, as they should according to law have been made; and that the monies severally paid by the said purchasers for the portions sold to them respectively, of the said real and personal estate and slaves, by the said Richard Relf and Beverly Chew, or either of them, were not respectively full and valuable considerations for said portions of said real and personal estate and slaves; that many of said sales were made by the said Richard Relf and Beverly Chew, as pretended testamentary executors, after the year of testamentary execution had expired, and when they had not, nor had either of them, been continued by the order of any judge or court of competent authority in their said functions of executors: that the said Richard Relf and Beverly Chew had not, nor had either of them, caused themselves, or either of them, to be duly recognized by a court of competent authority, as the attorney or attorneys of the said Mary Clark, and that all acts of the said Richard Relf and Beverly Chew, in relation to the estate of the said Daniel Clark, were upon the face of the proceedings in the foregoing, and in many other respects illegal, and informal, and fraudulent and void by the laws of the land, and so they were necessarily known to be, by the said purchasers at the said sales; and that the making, execution, and existence of the said last will of the said Daniel Clark, made by him in 1813, and its fraudulent concealment, suppression and destruction at his death by the said Richard Relf, were notoriously known and reported at the time in Louisiana; and that the said purchasers on the occasion of the making of the sales aforesaid, and afterwards, and their heirs and assigns had some knowledge, notice, information, belief or suspicion, or reason for belief or suspicion, and did in their consciences believe or suspect, that the said Richard Relf or Beverly Chew had acted fraudulently, improperly, and against equity and good conscience, in procuring to be admitted to probate the said will alleged to have been made by the said Daniel Clark, in 1811, and in having procured the appointment of themselves, the said Richard Relf and Beverly Chew, by the probate court, as executors of the said will of 1811, and representing the said real and personal estate of the said Daniel Clark, to have been devised to, and inherited by, the said Mary Clark; all which the said confederates will at other times admit, and then they will pretend that they have delivered or sent to your orator and oratrix, full, true and just accounts of the said real and personal estate and slaves of the said Daniel Clark, and all of the rents, profits, issues and services thereof, and of all the business or concerns appertaining or relating thereto; whereas your orator and oratrix expressly charge the contrary of such pretence to be true, and that the said confederates have

not nor has either of them, delivered or sent to your orator and oratrix, or either of them, any account whatever; all of which actings and doings and pretences tend to the manifest wrong and injury of your orator and oratrix, and are contrary to equity and good conscience.

In tender consideration whereof, and for as much as your orator and oratrix are remediless in the premises by the strict rule of the common law, and are unable to obtain adequate and complete relief except on the equity side of this honorable court, where matters of this and the like nature are alone properly cognizable and relievable; and your orator and oratrix expressly charge that the said Eleonor O'Bearne, George Green and Jane Green, his wife, and Sarah Campbell, if now living, are aliens, and subjects of the King of Great Britain and Ireland, and that Richard Relf and Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, The New Orleans and Carrollton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestine Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, are citizens of the State of Louisiana, and that your orator and oratrix are citizens of the State of New York.

To the end, therefore, that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belefine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrollton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gurchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, François Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen, and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, and the rest of the confederates, when discovered, may, without oath, full, true, direct, and perfect answer make; your orator and oratrix hereby expressly waiving the necessity of making such answer upon the oath of the said confederates, or of either of them, to all and singular the matters and things herein before stated and charged, as fully and particularly as if the same were hereinafter repeated, and

they and each of them thereunto distinctly and specifically interrogated; and that, not only as to the best of their, and each of their respective knowledge and remembrance, but also as to the best of their respective information, hearsay, and belief; and that the said confederates may also severally set forth what right, title, or interest they respectively have or claim in or to the real estate and slaves of the said Daniel Clark, or any and what part thereof, and how and in what manner they derive and make out the same, and by and under what deed or deeds, writing or writings, and may set forth the date and contents of all such deeds and writings; and that the said Eleonor O'Bearne, George Green, and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masana, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrolton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchinette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Françoise Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "The Mayor, Aldermen, and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabrial Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, and the rest of the confederates, may answer the premises; and that the said will made by the said Daniel Clark, in the year 1813, in which he devised all his estate as aforesaid to your oratrix, the said Myra, and the provisions and dispositions thereof, be carried into execution by and under the decree of this honorable court, and the rights and interests of your orator and oratrix under the same be declared and secured; and that it may be declared that the said will, alleged to have been made by the said Daniel Clark, in 1811, had been utterly revoked and declared to be good for nought, by him, the said Daniel Clark in his lifetime, and that the said will, so alleged to have been made by the said Daniel Clark, in 1811, is in fact and in truth utterly void and of no effect—and that the said will made as aforesaid, by the said Daniel Clark, in 1813, was duly made and executed by him, the said Daniel Clark, with all the formalities and other requisites necessary for passing real and personal estate by devise, and that it was the only true and valid will of the said Daniel Clark; and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark to your oratrix, the said Myra Clark Whitney, and that in and by the same, he, the said Daniel Clark, did acknowledge and declare your oratrix, the said Myra Clark Whitney, to be the legitimate daughter of him, the said Daniel Clark, and that the said Daniel Clark departed this life on or about the 16th day of August, 1813, without altering or revoking his said will, so made by him, as aforesaid, in the year 1813, and containing the said devise to, and the said declaration of acknowledgment of the legitimacy of your oratrix, the said Myra, made as aforesaid, by the said Daniel Clark, in his said last

will, made by him in the year 1813, was a full and perfect and effectual act of legitimation of your oratrix, the said Myra Clark Whitney, if any such act would have been necessary to establish the legitimacy of your oratrix, the said Myra, and that it vested in your oratrix all the rights, capacities, and privileges of a legitimate child; and also, that it may be declared that your oratrix, the said Myra, is the legitimate child of the said Daniel Clark, and that the said Daniel Clark was the lawful husband of the said Zuline née Carriere, the mother of your oratrix, the said Myra, at and before the time when she, the said Zuline, became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that it may be declared that all and every of the said sales of the said real and personal estate, and the said slaves of the said Daniel Clark, made by the said Richard Relf and Beverly Chew, or by either of them as the executor or executors of the said revoked will of 1811, or as the attorney or attornies of the said Mary Clark, or in any other capacity, are null and void, and of no effect; and that the said real and personal estate and slaves of the said Daniel Clark, descended to your oratrix, the said Myra, upon the death of the said Daniel Clark, as his, the said Daniel Clark's devisee and heir at law, and that the said Eleonor O'Bearne, George Green, and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Mintuan, Belifine Berdoule, Manuel Marquez, John Mathieu, Thos. D. Hailes, Mr. Calloway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrolton Rail Road company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchinette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, François Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. P. Field, P. O. Sorbet, Claude Samory, "The Mayor, Aldermen, and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, may be decreed to deliver up to your orator and oratrix the possession of all the said real estate and slaves hereinbefore enumerated and described, and now held and possessed, or claimed to be held and possessed by them or either of them, jointly or severally, or in any other manner, as owners or otherwise, and to come severally to an account with your orator and oratrix, for the rents, profits, issues, and services of the said real estate and slaves of the said Daniel Clark, which have been possessed or received by the said defendants, or any of them, or by any other person or persons, by their or either of their order, or for their or either of their use, since the the death of the said Daniel Clark, and respectively to pay over to your oratrix whatever shall be found due from them or any of them, upon the taking of such account, and that in the taking of such account, the said defendants may respectively be charged with interest for such balance as shall appear to have been in their hands from time to time, and that the said defendants may be respectively decreed to deliver up to your orator and oratrix all deeds and other writings in their hands relating to the

said real and personal estate and slaves of the said Daniel Clark, and that an account may also be taken of the personal estate and effects of the said Daniel Clark, and the profits, issues and profits thereof, possessed or received by or by the order of, or for the use, or which may have come to the hands of the said Richard Relf and Beverly Chew, or either of them, as said executors of the said revoked will of 1811, or as said attorneys of the said Mary Clark, or by or by the order, or for the use, or which may have come to the hands of any other of the said confederates, and that the said Richard Relf and Beverly Chew and the rest of the confederates may be respectively decreed to pay to your orator and oratrix what shall be found due from them, or any of them, on account of the said personal estate and effects of the said Daniel Clark, and that your orator and oratrix may have such further or other relief in the premises as the nature of the case may require, and as may seem meet to this honorable court, and agreeably to equity and good conscience.

May it please this honorable court, the premises considered, to grant unto your orator and oratrix, the people's most gracious writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Eleonor O'Bearne, George Green, and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masana, Jean B. Ambrose, John Minturn, Belifine Berdoule, Manuel Marquez, John Matthieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrolton Rail Road company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francois Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, the Mayor, Aldermen and inhabitants of the city of New Orleans, Augustus Pépie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes, fils, and Herbert Fortier, and their confederates, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear according to law, and the course of practice in this honorable court, before the honorable the judge of the district court of the United States, for the eastern district of Louisiana, then and there to answer all and singular, the premises, and to stand to, abide by and perform such order and decree therein, as to this honorable court shall seem meet.

And your orator and oratrix, as in duty bound, will ever pray, &c.

(Signed) JAMES W. WHITE,
Solicitor for complainants.

Filed 28th July, 1836.

(Signed) T. W. COLLENS, Dep. Clk.

Prayer for Oyer.

WILLIAM W. WHITNEY, et ux.
vs.
RICHARD RELF, et als. } No.

In equity in the district court of the United States, in and for the Eastern District of Louisiana.

Of the respondents in the above entitled bill, Richard Relf and Beverly Chew, by their solicitor L. C. Duncan; Francois H. Pettitpain, Claude Remie Samory, Louis Lalande Ferrier, by their solicitor J. Seghers; Maria Holerang, Dusuau Delacroix, by their solicitor P. H. Rost; the mayor, aldermen, and inhabitants of New Orleans; Soniat Dafossat and Louis Desdunes, by their solicitor J. J. Mercier; James H. Field, by his solicitor H. Lockett; Widow Jaubert, and Luke Vigneau, Charles Patterson, M. Calloway, Ramon Masana, Manuel Marquez, Charles Fonde, Belfine Burdule, Antoine Piernas, John Matthieu, by their solicitor Isaac T. Preston; John Minturn, George Kenner, and Duncan Kenner, by their solicitor I. Slidell; James Hopkins, by his solicitor J. R. Sterrett; P. O. Sorbe, Rene Limonier, by their solicitor R. M. Shepard.

The said Francois H. Petitpain, Claude Remie Samory, Louis Lalandi Ferrier, Dusuau de la Croix, Soniat Dafossat, Louis Desdunes, Widow Joubert, Belfine Berdule, Antoine Piernas, P. O. Sorbe, and Rene Limonier, come and say that French is the mother tongue of each of them; and each of them for himself requires, before he pleads answers or demurs to the said bill, that a copy of the same be served on him in his maternal language.

And all of the above named respondents, here appearing separately by their respective solicitors, crave oyer of all the supposed plans, acts of sale, certificates of survey, documents purporting to be inventories, schedules, wills and probate of wills mentioned in the bill of complaint exhibited against them herein; a printed copy of which they hereto annex.

And if it be not possible for said complainants to afford these respondents oyer of the *originals* of such supposed instruments, they then pray that duly certified copies of the same, according to the laws of Louisiana, may by order of this honorable court, to said complainants, be filed herein, and served on the respondents, that they may be enabled to take cognizance thereof. Particularly and especially do these defendants crave oyer of the documents, writings, and instruments, described in the said annexed printed instrument, and marked and numbered therein as follows, to wit:

I. The plan mentioned in the third article on the first page of the said printed bill.

II. The act of sale mentioned in the fourth article of the first page of said printed bill.

III. The act of sale mentioned in the fifth article on the first page of said printed bill.

IV. The act of sale mentioned in the sixth article of the first page of said printed bill.

V. The plan mentioned in the seventh article on the first page of said printed bill.

VI. The plan mentioned in the eighth article on the first page of said printed bill.

VII. The plan mentioned in the ninth article on the first page of said printed bill.

VIII. The plan mentioned in the tenth article on the second page of said printed bill.

IX. The act mentioned in the eleventh article on the second page of said printed bill.

X. The act of sale mentioned in the twelfth article on the second page of said printed bill.

XI. The *two acts* and judgment of court, including the entire transcript of the record of the case in which said judgment was rendered, mentioned in the 14th article on the second page of said printed bill.

XII. The certificate and plan, or map of survey, mentioned in the sixteenth article on the second page of said printed bill.

XIII. The certificate and plan of survey mentioned in the sixteenth article of the second page of said printed bill.

XIV. The plan and certificate mentioned in the eighteenth of the second page of said printed bill.

XV. The plan and certificate mentioned in the nineteenth article of the second page of said printed bill.

XVI. The certificate mentioned in the twentieth article of the second page of said printed bill.

XVII. The plan or map and certificate of survey mentioned in the twenty-first article of the second page of said printed bill.

XVIII. The plan or map and certificate of survey mentioned in the twenty-second article of the second page of said printed bill.

XIX. The inventory of Daniel Clarke's succession, mentioned in the *first* article on the third page of said printed bill, as being deposited in the probate court of New Orleans.

XX. The act mentioned on the third page of said printed bill, as the first of a series of debts, to wit, an act of sale from said Daniel Clark to Yenon Cavelier and Louis Deferut, by act before Peter Pedesclaux, dated January 20th, 1812.

XXI. The act mentioned on the third page of said printed bill, as the third of a series of debts, to wit, an act of sale or mortgage before Peter Pedesclaux, dated 16th March, 1812.

XXII. The schedule of debts and property made and filed in the probate court, as described in the paragraph immediately succeeding the fourth series of enumerated debts, on the third page of said printed bill.

XXIII. The will of Daniel Clarke, admitted to probate in the probate court for the parish and city of New Orleans, as described in the six-

teenth line of the first page of said printed bill, together with a complete transcript of all the proceedings had in said probate court, in the matter of the estate of the said Daniel Clarke.

(Signed)

L. C. DUNCAN,
JOHN SLIDELL,
H. LOCKETT,
J. J. MERCIER,
JULIEN SEGHERS,
J. R. STERRETT,
ISAAC T. PRESTON,
P. A. ROST,
R. M. SHEPARD.

Endorsed—Filed 20th February, 1837.
(Signed) T. W, COLLINS, Dy. clk.

Order of Court.

Thursday, 9th March, 1837.

Present Hon. Samuel H. Harper.

W. W. WHITNEY & WIFE, *vs.* RICHARD RELF, et als. } No. 3823.

In this case, having maturely considered the prayer for oyer and for copies of bill in French, the court this day delivered its written opinion thereon, whereby it is ordered, adjudged, and decreed, that the application for oyer of documents and for copies of the bill of complaint in the manner prayed for be granted; and, further, that all future proceedings in this case shall be in conformity with the existing practice of this court.

Opinion of the Court.

WHITNEY AND WIFE, *vs.* RICHARD RELF and others.

This suit has been commenced by a bill in equity, and, before answering, the defendants crave oyer of certain documents referred to in the bill, and also demand that a copy of it be served on each of them, whose mother tongue is French, in the French language, in conformity with the rules of practice of the State courts, and adopted by this court. This application is resisted by the plaintiffs, on the ground that by the rule of practice, for the government of courts of equity, the defendants are not entitled to oyer, nor to a copy of the bill, unless they choose to take copies from the clerk's office; and it is insisted, that the Supreme Court of the

United States has decided, that the practice of the high court of chancery in England shall govern this court in its proceedings in equity suits. Thus, this question is again brought before this court for decision. In the case of Edward Livingston *vs.* Benjamin Story, reported in 9th Peters, the Supreme Court say, at the commencement of their opinion, that the argument addressed to them was confined principally to the general question, whether the district court of the United States in La. has *equity powers*. Now, that never was questioned here, and ought not to be doubted any where. It is not the *equity power* existing in this court which is denied, but that that power should alone be exercised to the *mode* of proceedings established by law in the State courts of La., by the act of Congress of the 26th May, 1824, and not by the rules of the high court of chancery in England, or by any system prescribed in the common law States of this Union. In the concluding part of the opinion delivered in the above case, it is said, "If there be no law, or rules of proceeding in La., applicable to suits in equity, the U. S. court here must proceed according to the principles, rules and usages of the circuit courts of the U. S., regulated and prescribed for the circuit courts in the other States of the Union."

Hence, it would seem to follow that if our laws and practice afford equitable relief, then they are to govern in the decision of equity suits, the civil law being the acknowledged law of Louisiana; it follows that our entire system is one of equity. It was from the civil law that England derived her system of chancery courts; but while she borrowed only that *part* of the civil law, we recognize the *whole* code. It is true, when she adopted the principles of equity from the civil law, she adopted, at the same time, an artificial set of rules of her own, for the purpose of carrying these principles into effect in *her* courts of justice; while we, in Louisiana, not only recognize the *principles* of equity, but preserve the civil law *mode* of carrying them into effect in *our* courts of justice. The difference then is, that the two countries pursue a different *practice* in attaining the same end. But this is an important difference, as I shall presently show. I think wrong deductions are made on this subject from a wrong application from technical terms. For example. It is said that we have no courts of equity in this State. This is true in the sense the words "courts of equity" are understood in *common law* countries.

In these countries they have two distinct systems of jurisprudence, one of common law, and one of equity. It this State we have but one system. The same judge administers both law and equity in the same case, between the same parties, if the case require it, and he is expressly so required by the 21st article of the civil code of Louisiana. Is not that a court of equity, altho' not so styled *eo nomine*? So again we hear the phrase "suit at law." That expression, as used in England and in the common law States of the Union, is understood to mean a suit to be tried according to the principles of the *common law*, as contradistinguished from a suit in equity. In this State no distinction is made in the *names* of suits. If the written law of the land gives complete redress, the case is governed by it. If not, or if the law is silent, the judge exercises his

equity powers, and I defy any one who will attentively examine the laws of Louisiana, as they now exist, to point out a single case in which any equity *right* secured by the chancery system in England is withheld from the suitor in our courts; the *mode* of redress is different, but not the principle;—I say any one who will examine our *laws;* for reference is not to be made to any particular law, but to the whole system of jurisprudence, including the decisions of the courts. The 16th section of the judiciary act prohibits the institution of a suit in equity, when plain and adequate redress can be had at law. If, then, the *laws* of Louisiana afford a complete redress in all cases, no suit in equity, technically so called, ought to be instituted. It is not true, as seems to have been asserted at the bar of the Supreme Court, that there are no equitable claims or rights recognized in Louisiana. The principal subjects which are said to be exclusively within the chancery jurisdiction are the following, viz: accident and mistake, account, fraud, infants, specific performance of agreements and trusts; now all these matters are amply provided for by our laws, and are continually adjudicated, as the books of reports show. It is true, the following technical terms employed in chancery practice are unknown in our courts, viz: bill of interpleader, bill to perpetuate testimony, bill of discovery, bill of revivor, cross bill, bill of review, &c. But all the matters contemplated by these bills are brought before our courts by simple petitions, suited to the exigency of the case; for instance, if the rights of a third party be jeopardized in a suit between others, he is permitted to file a petition of intervention, which corresponds with a bill of interpleader, and also to that of a cross bill. The right to perpetuate testimony of witnesses, is secured by an act of Congress. By our law either party to a suit can compel his adversary to answer on oath all pertinent interrogatories, by a simple application to the court to that effect, without the formality and expense of exhibiting a "bill of discovery." The object of a bill of revivor is to revive suits that have abated by the death of a party. To revive a suit in that condition, nothing more is necessary, according to our practice, than to suggest the death to the court, and on application it is a matter of course to order the representatives of the deceased party to be brought into court. Bill of review are founded on some error appearing in the body of the record, or on new matter discovered since the decree made. Relief with us in such cases may be given by entertaining a simple motion for a rehearing of the cause.

With respect to suits by or against infants or minors, our laws are very ample; they require, for ordinary purposes, that every minor shall have a *tutor* or *curator* appointed in some one of the modes prescribed by the civil code; and in extraordinary cases, the courts are authorized to appoint a curator *ad hoc* to aid them in their suits, which answers to the chancery practice of appearing by a *prochain ami*, or next friend. As it regards the enforcement of specific agreements, the records of our courts shew it to be of daily occurrence. Trusts are also the peculiar care of our laws. As concerns lunatics, every provision is made, both for the ascertainment of the fact of lunacy, and for the care of their person and estates, which will fully appear from the civil code on the subject of in-

terdiction. If, then, both by our laws and practice, every conceivable case in equity is provided for without regard to the childish distinction of the *names of process*, I would like to be informed by what right, a suitor presents in this court a bill in equity, technically so called, when the act of Congress expressly declares, that no such suit shall be instituted, when there is a plain and adequate remedy at law. The remedies at common law in England are prescribed by inflexible rules, and so are the remedies in chancery. Blackstone says, in chapter 27 of the 3d vol., "the system of our equity courts is a labored, connected system, governed by established rules, and *bound down* by *precedents* from which they *do not depart*, altho' the reason of some of them may perhaps be liable to objections."

Not so with us—rules and precedence must give way to reason and natural justice. When equity, in the true sense of the word, can be administered in this court under the present practice in every case, why should a foreign system be introduced, merely to preserve, as it is said, a *uniformity* of practice throughout the Union? That cannot be effected without also imposing on us the rules of the *common law;* but the Supreme Court have said, that the words "all civil causes used," used in the act of 1824, embrace actions both of law and equity, and they have decided that under the provisions of that act, the *civil* and not the *common* law practice shall prevail in La. Now it is difficult to perceive why the civil law practice should not also prevail in equity suits. I have said that the difference between the technical practice of the courts of equity, as established in common law countries, and the rules of proceeding in subjects of equity in this State, is very important to the citizens of Louisiana.

A great proportion of the members of this bar have been educated as civilians, and know nothing of the arbitrary rules of proceeding in the high court of chancery in England; and with respect to the other members of the legal profession, who might formerly have been acquainted with the system, long residence here, and a course of practice essentially different, have disqualified them as practitioners in chancery. Besides, the mass of the population, both by birth and education, are attached to the modes of judicial proceedings which have always existed in La., from its first settlement, and which they claim as their birthright. Impressed with these facts, the delegation from this State, perhaps anticipating some encroachments on the rights of the citizens, in this respect, procured the passage of the act of 1824, expressly declaring that all civil causes brought before the court of the U. S. in this district should be conducted according to the State practice. So watchful were they of the rights of their constituents, that four years afterwards, viz: in 1828, when Congress made a law in relation to these States of the Union, which had been adopted since the 29th of Sept., 1789, declaring that proceedings in these States should be according to the principles, rules and usages, which belong to courts of equity; Louisiana, at their instance, was expressly excepted from the operation of that law. So far, then, as Congressional legislation has been had on the subject, no foreign system of practice can be imposed on this State; and until these acts of the national legislature shall be declared unconstitutional by the competent authority,

it is insisted that this State is exempted from the onerous, and (to us,) odious rules of procedure with which we are threatened. A few members of this bar seem to think, that the decision of the case of Livingston and Story has positively settled the question, and has fixed the chancery practice on this court. That, however, is not the opinion of the majority of the bar, nor is it my opinion. If I thought so, however much I might regret it, I would not officially gainsay it. From the following hypothetical statements made by the court in the case referred to, the question of practice still seems to be open. The court say "if, as has been *asserted* theee are no equitable claims or rights recognized in that State, nor any court of equity, nor State laws regulating the *practice in equity cases*, the law of 1824 does not apply to the case now before the court." And again, the court say, "by the provisions of the act of 1824, the exercise of equity powers must be conformable to the law directing the mode of proceeding in the district courts of the State, if any such exist; and if no such rules and laws applicable to the case exist in La., then the chancery practice shall prevail." With respect to both these suppositions, I trust, it has been shewn that altho' there is no court in La. styled a court of equity, yet by leaving out the *name*, all the State courts are substantially courts of equity, and give relief in all conceivable cases, according to their peculiar practice. It may be proper here to give a brief explanation of a circumstance which the Supreme Court have noticed, viz: that this court did not consider the act of 1824 as applying to the practice in equity, because in the *in the* caption of a set of rules made in 1829 for the government of the U. S. court, it is said "general rules for the government of the U. S. court in the eastern district of Louisiana, in civil cases or suits *at law*, as contradistinguished from admiralty and equity causes and criminal prosecutions," &c. At the time I modified the old rules of this court, and made a number of new ones, in 1829, the institution of a suit in *chancery* had not been thought of here, and it was presumed such an innovation on our practice never would be attempted; and inasmuch as the Supreme Court had, in 1822, prescribed rules in equity proceedings for all the circuit courts of the U. S, it would have appeared harsh to declare by a rule, that they should be abrogated in this court, when their practical operation was not anticipated here, and besides, no occasion had then arisen to require a critical examination of the language of the acts of 1824 and 1828, which it is now contended, repeal these rules so far as La. is concerned. The decision in the case of the U. S. *vs.* Howland, is not opposed to the construction I give to the acts of 1824 and 1828. The court there affirm, that the courts of the U. S. possess *equity* powers in *all* the States of the Union, whether courts of equity exist in the States or not, and that the same rule of decision shall equally apply to all of them; that is to say, the general principles of universal equity shall be applied to suits before those courts, where the law does not afford a remedy; and that is in perfect accordance with the article of the civil code of this State, to which reference has already been made. But if it be reiterated, that the code, nor any other statute of the State has created a separate court, called a court of equity, altho' equity

jurisdiction be exercised in her courts, yet that the want of the name is a fatal objection, it might as well be said that a house is not a house, because it is called *maison* in French. The doctrine laid down in the case of Parsons *vs.* Bedford is not denied. The Supreme Court there say, "it was not the intention of Congress to give an absolute and imperative force to the *modes* of proceeding in civil causes in La. to the courts of the U. S., for it authorizes the judge to modify them." But then it follows, that until he does modify them, they form the rule of proceedings in *all civil* causes; which descriptive expression, it is admitted, is broad enough to embrace suits in equity. Entertaining these views, it is ordered that the application of the defendants for oyer of documents, and for copies of the bill of complaint in the manner prayed for, be granted; and further, that all future proceedings in this case shall be in conformity with the existing practice of this court.

Endorsed—filed this 9th March, 1837.

(Signed) DUNCAN N. HENNEN, Clerk.

Supplemental Bill.

To the Honorable the Judges of the Ninth Circuit Court of the United States for the Eastern District of the State of Louisiana, in Chancery sitting:

Your orator, Edmund Pendleton Gaines, and oratrix, Myra Clark Gaines, late Myra Clark Whitney, represents, that heretofore in this honorable court a suit was pending in behalf of your oratrix, against Beverly Chew, Richard Relf and others, and since the last term of this court your orator and oratrix have become united by the bonds of matrimony.

Wherefore they pray that the said suit may be ordered to stand and be proceeded in, in the names of your orator and oratrix, as complainants. And they will ever pray.

(Signed) GRIMES, PEYTON & CHINN, for Complainants.

Endorsed—Filed May 24th, 1839.

(Signed) DUNCAN N. HENNEN, Clerk.

Petition for a rehearing.

EDMUND P. GAINES, and his wife MYRA, *vs.* CHEW, RELF, and others. } Circuit Court of the United States for the Ninth Judicial Circuit and Eastern District of Louisiana.

Bill in Equity.

The petition of the complainants in the above entitled case shews, that your petitioners are much aggrieved, by an interlocutory decree made in

this case by the Hon. Samuel H. Harper, formerly the judge of the district court, in and for this judicial district, on the 9th day of March, 1837, whereby it is ordered, that the application of defendants for oyer of documents, and for copies of the bill of complaint in the manner prayed for, be granted; aud further, that all further proceedings in this case shall be in conformity with the existing practice of this court.

Your petitioners allege that they are not bound to furnish copies or oyer of the papers and documents mentioned in said decree, and that they are entitled to have this cause carried on and tried according to the chancery practice in England, as modified and regulated by the Supreme Court of the United States.

Your petitioners therefore humbly pray that your honors will be pleased to grant a rehearing in this cause, and as in duty bound they will ever pray.

(Signed) CHINN, GRIMES & PEYTON,
Atty's for Petitioners.

Endorsed—Filed June 1st, 1839.
(Signed) D. N. HENNEN, Clerk,
by L. C. HORNSBY, Dy. Clerk.

Order.

Saturday, 1st June, 1839.

Present: Honorable JOHN McKINLEY, Presiding Judge.
P. K. LAWRENCE, District Judge.

GAINES & wife,
vs.
CHEW, RELF & others. } No. 122.

On this day the complainants read the original bill filed in this case, and the prayer for oyer filed on the 20th February, 1837, and the opinion of and order made on the 9th day of March, A. D. 1837, and the petition for a rehearing filedthis day, andthere upon moved the court:

1st. To set aside and vacate said decretal order.

2nd. To remand the said cause to the rule docket, and order that the complainants should be permitted to poceed therein according to chancery practice. The defendants appeared by their counsel, and resisted said application and motion, upon the ground that chancery practice should not be had in this court, and they relied upon the treaty of cession of Louisiana to the United States from France in 1803. The acts of Congress of 29th Sept., 1789, 26 May, 1824, the 19th May, 1828, and 20th May, 1830, and the first rule adopted by this court of 20th Nov. 1837.

And upon the hearing of said motion on said petition for a rehearing, the judges of this court differed in their opinions. And for as much as there is a difference of opinion between the judges of this court, and no decision thereof can be had upon the questions presented, it is ordered to be certified to the Supreme Court of the United States for its decision upon the following questions:

1st. Does chancery practice prevail, and should it be extended to litigants in this court and in this cause?

2nd. Should or not the said order of the date of 9th March, 1837, be annulled and vacated?

3rd. Should or not the cause be placed upon a rule docket, and the complainants be permitted to proceed according to chancery practice, and the defendants be required to answer without oyer of the documents prayed for, or a service of the bill in French as prayed for?

And the cause coming on to be heard, by consent of parties, upon the demurrer, and upon the adjudication thereof, the judges were opposed in their opinions, and the following question is ordered to be certified to the Supreme Court of the United States for its decision and adjudication, to wit:

Does or not the bill of the complainant herein present such matter as that this court thereunder authorise chancery practice?

CLERK'S OFFICE, CIRCUIT COURT UNITED STATES,
9th Circuit and Eastern District of Louisiana.

I, Duncan N. Hennen, clerk of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, do hereby certify that the foregoing twenty-three pages contain a true and faithful copy of the bill, demurrer and prayer, for oyer orders and opinions of the court in the matter of Edmund P. Gaines and wife vs. Chew, Relf, et als.

Witness my hand and the seal of the said court, this 5th day of August,
[SEAL] 1839, at the city of New Orleans.

DUNCAN N. HENNEN, Clerk.

389.

SUPREME COURT OF THE UNITED STATES.

No. 7.

JAMES MOODY VAUGHN, ET AL., APPELLANTS,

vs.

HENRY NORTHUP, ADM'R OF JAMES MOODY, DEC'D, AND BENJAMIN MOODY, ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR ALEXANDRIA.

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Langtree & O'Sullivan, Print.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Henry Northup, administrator of James Moody, Benjamin Moody, Mary Moody, William Hardesty, and Ann Hardesty, his wife, Daniel McAlister, and Catharine McAlister, his wife, John L. Neale, and Sarah Neale, his wife, Waters F. G. Lansdale, and Susan L. Lansdale, his wife, Thomas Marshall, and Rebecca Marshall, his wife, Madison Miller, and Elizabeth Miller, his wife, Benjamin Moody, and Ann Moody, his wife, Sarah F. Moody, Luke Church, and Mary F. Church, his wife, Elizabeth Moody, Ann Dorsey, William Long, and James Z. Long—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the 2d Monday of January next, to answer the appeal of James Moody Vaughn, and to show cause, if any there be, why the decree rendered against the said James Moody Vaughn, in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this 24th day of July, 1839.

W. CARNCH.

Service acknowledged.

COXE & CARLISLE,
For defendants in error.

18th December, 1839.
Filed 24th July, 1839.

Know all men by these presents, that we, John Borum and Francis A. Dickens, are held and firmly bound unto Henry Northup, administrator of James Moody, deceased, Benjamin Moody, Mary Moody, William Hardesty, and Ann Hardesty, his wife, Daniel McAllister, and Catharine McAllister, John L. Neale, and Sarah Neale, his wife, Waters F. G. Lansdale, and Susan L. Lansdale, his wife, Thomas Marshall, and Rebecca Marshall, his wife, Madison Miller, and Elizabeth Miller, his wife, Benjamin Moody, and Ann Moody, his wife, Sarah F. Moody, Luke Church, and Mary F. Church, his wife, Elizabeth Moody, Ann Dorsey, William Long, and James Z. Long, in the full and just sum of two hundred dollars, current money, to be paid to them, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of June, in the year one thousand eight hundred and thirty-nine.

[REC.]—1

Whereas, lately at a circuit court of the District of Columbia, sitting as a court of equity for the county of Washington, in a cause wherein James Moody Vaughn, Thomas Vaughn, and others, were complainants, and the said Henry Northup, administrator, James Moody, Benjamin Moody, and the above named obligees, were defendants, a decree was rendered against the said complainants, and they having entered an appeal to the Supreme Court of *of* the United States.

Now the condition of the above obligation is such, that if the said James Moody Vaughn, Thomas Vaughn, and others, complainants, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue in law.

JOHN BORUM, [SEAL.]
FRANCIS A. DICKENS, [SEAL.]

Signed, sealed, and delivered, in presence of
J. A. COGLE.

Approved July 24th, 1839. W. CRANCH.
True copy—Test: W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-sixth day of the same month, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States of America the sixty-third.

Were present:

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, } *Ass't Judges.*
JAMES S. MORSELL, }
ALEXANDER HUNTER, Esquire, *Marshal.*
WM. BRENT, *Clerk.*

In the records of the proceedings of the said court were the following, to wit:

Parties.

JAMES MOODY VAUGHN, and others, complainants,
vs.
HENRY NORTHUP, administrator of James Moody, deceased, and Benjamin Moody, and others, defendants.

Be it remembered that heretofore, to wit, on the twenty-fourth day of April, eighteen hundred and thirty-seven, the said complainants, by Brent & Brent, Esquires, their solicitors, filed in court here the following bill of complaint:

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the county of Washington, in Chancery:

Humbly show unto your honors, your orators, James Moody Vaughan, Thomas Vaughan, Tillage Vaughan, John Vaughan, William S. Smith, and your oratrix, Elizabeth Smith, his wife, who was Elizabeth Vaughan before her marriage, and Caleb Melson, and Catharine P. Melson, his wife, who was Catharine P. Vaughan before her marriage; that the said James, Thomas, Tillage, John, Elizabeth, and Catharine, all of the State of Virginia, are the lawful and only children of Catharine Moody, deceased, who was the only child next of kin and heir of the late James Moody, who died sometime in the year of our Lord one thousand eight hundred and two, in Fayette county, in the State of Kentucky; and that your orators and oratrixes aforesaid are the next of kin and the only legal heirs of the said James Moody, who died intestate, and as such, are entitled to all the real estate of said deceased; and as next of kin, being the grand-children of said deceased James, entitled to his personal estate, to be distributed.

Your orators and oratrixes further state, that their deceased mother, the only child of the said deceased James, intermarried with their deceased father, James Vaughan; and that your orators and oratrixes, the said James, Thomas, Tillage, John, Elizabeth, and Catharine, are the only children born from said marriage, except one by the name of William Vaughan, their brother, who was lost at sea in the year eighteen hundred and twenty-eight, without being married, and without leaving children or descendants, and whose next of kin your orators and oratrixes, as aforesaid, claim to be and are.

Your orators and oratrixes further state and charge, that their deceased grandfather aforesaid left no other heirs or next of kin, and no widow living.

And your orators and oratrixes further show that upon, or soon after the death of the said James Moody, deceased, a certain Henry Northrup, now of Washington county, in the District of Columbia, took out letters of administration upon the estate of the said deceased James Moody, in Jefferson county, State of Kentucky, as he states, and in virtue thereof causes himself to be possessed of all the goods, chattels, rights, and credits, and personal estate, and effects, of the said intestate, to an amount greatly more than sufficient to pay and satisfy the said deceased's funeral expenses and just debts, as well as legal expenses of said administration; that your orators and oratrixes knew of the said Henry Northup having received, as administrator aforesaid, from the Government of the United States, a large sum of money, the precise amount not known to your orators and oratrixes, but who have been informed and believe, and charge the same to

have amounted to at least the sum of five thousand two hundred dollars; and that he received the same as administrator of said intestate, under the act of the Congress of the United States of the fifth July, eighteen hundred and thirty-two, and in conformity to certain rules of the Treasury Department of the twenty-eighth July, eighteen hundred and thirty-two, for the settlement of claims under said act, or in virtue of some other regulations of said department; and your orators and oratrixes state and charge, that the said sum of money, or whatever sum was received under said law, was as pay allowed to the said intestate, or his legal representatives, for services rendered in the public, naval, or military service of the State of Virginia during the revolutionary war, as it is called.

And your orators and oratrixes further charge that, by the aforesaid act of Congress, the aforesaid sum of money, or whatever sum was received, was given to them; and that they are entitled to receive the whole sum, free and clear of all incumbrances which may be upon the estate of said deceased; and they pray your honors so to decree and to direct.

And your orators and oratrixes show that they have, by themselves and their agents, particularly by their agents and attorney in fact, John Borum, of Mathews county, in the State of Virginia, applied to the said Henry Northrup, and hath requested him to come to a full and true account of the personal estate and effects of the said intestate possessed by him as aforesaid, and to pay to your orators and oratrixes their distributive respective shares of the clear residue thereof, with just and reasonable request, &c. And your orators and oratrixes well hoped, &c. But now the said Henry Northrup absolutely refuses so to do, &c.; but combining and confederating together with a certain Benjamin Moody, Mary Moody, widow of Thomas Moody, deceased, William Hardesty, and Ann Hardesty, his wife, Daniel McAllister, and Catharine McAllister, his wife, John L. Neale, and Sarah Neale, his wife, heirs and next of kin of said deceased Thomas, Waters F. G. Lansdale, and Susan L. Lansdale, his wife, Thomas Marshall, and Rebecca Marshall, his wife, Madison Miller, and Elizabeth Miller, his wife, Benjamin Moody, and Ann Moody, his wife, Sarah F. Moody, Luke Church, and Mary F. Moody, his wife, and Elizabeth Moody, widow of deceased William Moody, and Ann Dorsey, all of State of Kentucky; and also, with certain next of kin of the deceased, Francis Weems, of Maryland, viz: William Long and James Zadock Long, who were minors, upon the 24th December, eighteen hundred and thirty-three, and their grandson, Zadock Long: all of whom are prayed to be made defendants to this bill of complaint, together with said Henry Northrup, to and with divers other persons, at present unknown to your orators and oratrixes, whose names, when discovered, it is prayed may herein be inserted and made parties hereto; and continuing now to injure and oppress your orators and oratrixes in the premises, sometimes pretending that your orators and oratrixes, named as aforesaid, are not the next of kin and heirs to the said deceased intestate, but that the

said defendants, except the said Henry Northrup, are the next of kin and heirs to said intestate, and as such, entitled to his said estate in the hands of the said Henry, as administrator aforesaid.

Whereas your orators and oratrixes charge the contrary, that your orators and oratrixes are the only next of kin to the said intestate, as his grandchildren, and as such, entitled to their respective distributive shares of said intestate's estate in the hands of said Henry to be administered, or what may remain thereof, as aforesaid, and to the full amount of the said sum allowed under the act of fifth July, 1832; and the said Henry Northrup, at other times, pretends that he has no personality belonging to said estate to administer or distribute; whereas your orators charge the contrary, that the said intestate left a large personal estate, the amount of which is unknown to them, but has been possessed by the said Henry Northrup, particularly a sum of five thousand two hundred dollars which the next of kin of said intestate, your orators and oratrixes are, exclusive of other effects of said intestate, entitled to, with interest from the time said Henry Northrup received the same from the Government of the United States, at Washington city, in the District of Columbia, as belonging to the legal representatives of said intestate, James Moody, as half-pay from the State of Virginia, provided for by an act of Congress of the fifth July, eighteen hundred and thirty-two, and allowed by the Government of the United States, and paid to said Henry Northrup, or some proper admitted agent of his, at said city of Washington, as your orators and oratrixes have been informed and believed, about December, 1833, and charge which said sum of five thousand two hundred dollars belong exclusively to your complainants: all of which will be shown from certain proceedings had in the premises by said Henry Northrup with the Government of the United States, before the honorable Levi Woodbury, Secretary of the Treasury, and other officers of said government; and the said Henry Northrup, at other times, pretends that he has paid over the amount of said estate to be distributed, as well as the aforesaid sum of five thousand two hundred dollars, to the aforesaid confederates and defendants, who claimed the same as next of kin, in ignorance of your orators and oratrixes being the rightful heirs and next of kin of said intestate; whereas your orators and oratrixes charge, that the said Henry Northrup was not ignorant of your orators and oratrixes' claim and right to the same, but was well informed of the same by your orators and oratrixes, by their agent; and your orators and oratrixes also charge that he has not paid over the sum to any one; and if he has, that it cannot deprive your orators and oratrixes of their right and claim to have the same paid to them by the said Henry Northrup.

Your orators and oratrixes further state and charge, that the other defendants have no claim to the same, and that the claim set up by them is in fraud of your orators and oratrixes, and a fraudulent imposition, as they well knew or ought to have known; that the said deceased, James Moody, had been a married man, and had left descendants, and could have easily ascertained the same if due inquiry

had been made; and that their pretensions are in bad faith and against equity and conscience, and that the said John Northrup has confederated in the same: all which actings and doings and pretends are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators and oratrixes in the premises. In tender consideration whereof, and for as much as your *as your* orators and oratrixes are remidiless in the premises at and by the direct and strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this and a like nature are properly cognizable and relievable. To the end, therefore, that the said Henry Northrup, and the aforesaid named defendants, and the rest of their confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and as particularly as if the same were hereafter repeated, and they thereto distinctly interrogated; and more especially, that they may answer and set forth the evidence of disinterested witnesses to show how, and in what manner, they claim to be next of kin and heirs of the said deceased intestate, and as such entitled to a distributive share of his said personal estate, and particularly to said sum of five thousand two hundred dollars; and that they may answer the premises, and that an account may be taken of the personal estate and effects of the said intestate which have been possessed, or received, or ought to have been, by the said Henry Northrup, as administrator aforesaid, or by any other person or persons, by his order or permission, or for his use; and, also, an account of said intestate's funeral expenses and just debts; and that the clear residue of said intestate's personal estate, after paying all legal charges and just debts, may be ascertained and distributed amongst the next of kin of said intestate, and that your orators and oratrixes may each be paid their respective shares of the same; and your orators and oratrixes further charge that, by the aforesaid act of Congress, the aforesaid sum of money, or whatever sum was received, was given to them, and that they are entitled to receive the whole sum free and clear of all incumbrances which may be upon the estate of said deceased; and they pray your honors so to decree and to direct.

And further your orators and oratrixes pray that they may have their peace against the fraudulent claims and pretensions of the other defendants, and that the said John Northrup may be decreed to pay to your orators and oratrixes as before prayed for, in despite of the said other defendants' pretended and false claims. Your orators and oratrixes further pray your honors to grant the United States writ of subpœna, to be directed to said defendant, Henry Northrup, who is within your honors' jurisdiction, and such other orders and notices as the law directs, to the defendants, who are and reside beyond the District of Columbia, and within another jurisdiction, commanding them, and each of them, at a certain day, and under a certain pain therein to be inserted, personally to be and appear before your honors

in this court, then and there to answer the premises, and to stand to and abide such order and decree there as to your honors shall seem agreeable to equity and good conscience, and in default of their said appearance, that this bill be taken *pro confesso*, and a decree given accordingly.

Your orators and oratrixes further pray for all other and further relief in the premises that your honors can grant to them, and as in duty bound will ever pray, &c.

Your orators and oratrixes further pray your honors that the said Henry Northrup may, upon his oath, render a full and faithful account of all the personal estate and effects of said intestate which have come into his hands, and also that he may answer whether the said James Moody be deceased, and if so, where and when he died, and where and when the said Henry Northrup took out letters of administration upon said intestate's estate; and that he do exhibit a certified copy of said letters, and the bond and security given when the same was granted, and also, that do state upon oath the amount of money received under the act of Congress of the fifth July, eighteen hundred and thirty-two, for the legal representatives of said intestate James Moody, and for and on what account the same was paid and received; and as in duty bound, &c.

BRENT & BRENT,
Solicitors for Complainants.

WASHINGTON COUNTY, *District of Columbia, to wit:*

Be it remembered, that upon this twenty-fourth of April, eighteen hundred and thirty-seven, before me, a justice of the peace for the county aforesaid, personally appears John Borum, agent and attorney in fact for all the complainants in the aforegoing bill of complaint, and makes oath that the facts, as therein stated, to be of the knowledge of the complainants, he, of his knowledge, knows to be true, and so far as derived from the information of others, he believes them to be true; and further, that said complainants knew of their rights when the act of Congress of the fifth July, eighteen hundred and thirty-two, . This deponent has attended to the business exclusively, further as their agent, and is better acquainted with said facts the said complainants.

Sworn before CLEMENT T. COOTE, *J. Peace.*

Whereupon subpœna issued, as prayed, returnable the first Monday of May next.

Marshal's Return.

At which mentioned first Monday of May, A. D. 1837, comes into court here the said complainant, by his solicitor aforesaid; and the marshal of the District aforesaid, to whom the said subpœna was directed, makes return thereof to the court here, thus endorsed, to wit:

"Summoned H. Northrup—non sunt the rest.
A. HUNTER, *Marshal.*"

Defendant's Appearance and Answer of Northup.

Thereupon, the said cause was regularly continued at rules until the first Monday in September, eighteen hundred and thirty-seven, when Henry Northrup, by Richard S. Coxe, Esquire, his solicitor, filed the following answer, to wit:

The separate answer of Henry Northrup, one of the defendants named in the bill of complaint of James Moody Vaughn, and others, complainants:

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of advantage and benefit of exception that may be had and taken to the manifold and great errors, uncertainties, irregularities, defects and imperfections in the said bill of complaint contained, nevertheless, for answer thereunto, or unto so much thereof as this defendant is advised that it is material or necessary for him to make answer unto, he answers and avers:

That he admits it to be true that a certain individual named James Moody died in Lexington, in the State of Kentucky, about the time stated in said complainants' bill; that he had resided in Kentucky for many years, was well known to the community in which he lived; that he had always been considered, represented, and spoken of among them as a bachelor, as never having been married, and having no lineal heirs; that he had numerous collateral relations, brothers, sisters, nephews and nieces; that, at the instance of said collateral relations, who claimed to be the next of kin and lawful heirs of said deceased, this defendant applied for and, about May or June, eighteen hundred and thirty-three, obtained letters of administration on the estate of said James Moody, in the proper court of Jefferson county, Kentucky, a court of competent and exclusive jurisdiction in the case; that he gave the bonds, required by law, with sufficient security, and assumed upon himself the duties of said administration.

And this defendant further says, that, as such administrator as aforesaid, he received from the Secretary of the Treasury of the United States, on or about the 13th of September, eighteen hundred and thirty-three, the sum of four thousand one hundred and seventy-two dollars and forty-five cents; and subsequently, on or about the first of January, eighteen hundred and thirty-four, the further sum of one thousand and forty-one dollars and eleven cents, amounting in all to five thousand two hundred and fifteen dollars and fifty-six cents, being for so much money due to said James Moody, deceased, or his representatives, for military services rendered during the revolutionary war; that he has never, as such administrator, received any other or further money, or property of any kind.

And this defendant further says, that in procuring said letters of administration, and in prosecuting the claim of said James Moody for the said money so due and paid, this defendant acted as the agent

and attorney of the other person named as defendants in complainants' bill, with some of whom he contracted as early as February, 1830, and with the residue, as early as October, eighteen hundred and thirty-two. Under this arrangement, defendant contracted to prosecute the claim of said Moody against the State of Virginia. By the first agreement, defendant was to prosecute the claim at his own risk and expense, and to be entitled, as a compensation for his services, to a moiety of what might be recovered; by a subsequent modification of this arrangement, defendant was to have a third part of what he might recover for his compensation. It being found necessary for defendant, in order to entitle himself to receive said funds, to be clothed with the powers of an administrator, he took out the letters of administration aforesaid, in pursuance of said agreement with said other defendants. That the terms of said agreement were fair and in conformity with usage, and were, by all parties, deemed reasonable and just; the expense and trouble in preparing the evidence and prosecuting said claims, and the risk of ultimately failing, being all very considerable.

And this defendant further says, that during all the period which elapsed after he first entered upon this business, he never heard a whisper or suspicion, and never himself doubted but that the persons for whom he had been as aforesaid acting were, in fact, the next of kin and legal distributors of the estate of said James Moody. That, under this impression and belief, he had paid over to some of them the full amount to which, as such next of kin, they were respectively entitled; to others, he had paid nearly all, but had had no final settlement with them, and still held in his hands the sum of about twelve hundred dollars, as the balance to be paid said parties. That in this situation, in the month of September, eighteen hundred and thirty-five, this defendant was, for the first time, apprised by John Borum of the claim of said complainants. That he immediately apprised his co-defendants of this unexpected and extraordinary claim, and notified them that he should be compelled to withhold any further payments until this matter could be adjusted in the proper tribunal; since which, the defendant had made no other or further payments to them, or any of them.

And further answering, this defendant says, that in consequence of the fact that nearly all his papers relating to this matter are in Kentucky, he is not able to state, with precision, the amount he has paid over to his co-defendants, or expended in and about this business; but considering himself as acting merely in the capacity of agent for the heirs of James Moody, who had employed him, and having become administrator purely as such agent, he conceived himself bound only to his employers for the faithful performance of his trust to them. That having fully satisfied himself that the claim was good, and that the money would ultimately be received, he, from time to time, made payments to the different parties as their exigencies required, a considerable time before he actually received a cent. That he did what he has done in the business under the

fullest assurance and confidence that said parties were, what they claimed to be, the persons legally entitled to receive their respective proportions of said funds. That he did not pay to said complainants, or any of them, because he never did believe, nor does he now believe, that they, or either of them, were thus entitled.

If this court can entertain jurisdiction, which this defendant submits to the consideration of your honors, over him as an administrator, deriving his power and authority from the proper tribunals in Kentucky, to whom he is bound, by law and by his bond, to account for the faithful discharge of his duties, when, in all his actings and doings, he was merely the agent of the parties who employed him; when they, by long reputation, were his only legal representatives; when complainants have not established their right at law, which they are bound to do preliminary to coming into chancery upon such a claim; when they have allowed years to elapse without preferring or exhibiting any claim: all which matters and grounds this defendant prays to insist upon before this honorable court as if they, and each of them, had been formally pleaded, or taken advantage of, by demurrer. And he further prays, that he may have the benefit of every payment and expenditure which he has bona fide made, and of the terms of the contract under which he has expended much money and time; and that he be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

RICHARD S. COXE.

DISTRICT OF COLUMBIA, *Washington County, ss:*

Be it remembered, that, on this ninth day of September, eighteen hundred and thirty-seven, personally appeared before me, the subscriber, a justice of the peace, in and for said county of Washington, Henry Northrup, the defendant named within, who, being duly sworn according to law, says, that the averments and allegations therein contained, so far as they relate to his acts and doings, are true; so far as they relate to the acts and doings of others, he believes to be true.

Sworn, the day and year aforesaid, before me.

B. K. MORSELL, *J. P.*

Thereupon, Daniel McAllister, and others, by Richard S. Coxe, Esquire, their solicitor, filed the following answer, to wit:

Answer of McAllister, and others.

The joint and several answer of Daniel McAllister, and Catharine, his wife, late Catharine Moody, William Hardesty, and Ann Hardesty, his wife, late Ann Moody, John L. Neill, and Sarah, his wife, late Sarah Moody, Benjamin W. Moody, and Ann Moody, his wife, Ann Dorsey, late Ann Moody, Mary Moody, widow of Thomas Moody, deceased, citizens and residents of Washington

county and State of Kentucky, to a bill in chancery filed against them and others in the circuit court of Columbia, Washington county, by James Moody Vaughan, Thomas Vaughan, and others:

These defendants jointly and severally except to, and protest against, the jurisdiction of the circuit court aforesaid, inasmuch as their ancestor, James Moody, an officer of the revolution, was a citizen resident of La Fayette county and State of Kentucky, at the time of his death and many years before, and that he departed this life about the year 1802.

These defendants admit that Henry Northrup administered on the estate of the same James Moody, the ancestor, and got possession of considerable estate of said decedent, as stated in the bill filed above referred to. They admit that Congress passed the law referred to by complainants, and that said Henry Northrup, administrator, has received from the United States the sum allowed to the legal representatives of the said James Moody, the ancestor, of the revolution; and it may be true that the sum allowed and received by the administrator was five thousand two hundred dollars, as stated in the bill of complainants.

These defendants insist that they and other defendants in this case are entitled to the estate of the said James Moody, the ancestor, and deny that the complainants, or either of them, have any right, title or claim to the estate, real, personal or mixed, claimed or demanded in their said bill filed as aforesaid.

These defendants deny that James Moody, the ancestor, an officer of the revolution, from whom the complainants pretend to derive right and claim, was ever married, or had or left any lineal descendant, or lawful lineal heir; and that the basis of claim assumed by the complainants in their bill is untrue, and cannot be sustained by proof. That the said James Moody, the ancestor, left, at his death, Thomas Moody, a brother of the whole blood; Ann Moody, Sarah Moody, and Frances Moody, sisters of the whole blood; William Moody, a brother of the half blood. That Benjamin Moody, a brother of the whole blood, died before the death of James Moody, the ancestor, leaving a son and only child, named Benjamin Moody, who intermarried with Ann Moody, daughter of William Moody aforesaid. That Sarah Moody aforesaid died without issue. That Frances Moody, who intermarried with James Weems, has departed this life, leaving two daughters, who have also died, leaving two grand-children, sons, William H. Long and James Y. Long, now in the State of Missouri. That William Moody, brother of the half blood, departed this life since the death of James Moody, the ancestor: that he left, at his death, six daughters, Susan, Rebecca, Sally, Mary, Elizabeth and Ann: that Ann married Benjamin Moody as aforesaid: that Susan intermarried with Waters Landsdale: that Rebecca intermarried with Thomas Marshal: that Elizabeth intermarried with Madison Miller: that Mary intermarried with Julne Church: and Sally is still a single woman.

These defendants allege and insist that Catharine McAllister, late Catharine Moody, Ann Hardisty, late Ann Moody, Sarah Neil, late Sarah Moody, are the daughters and legal heirs of Thomas Moody, the ancestor, and through their father, Thomas, legal heirs of the said James Moody, the ancestor, and with the other collaterals named, entitled to the estate of the said James Moody, the ancestor: that Benjamin Moody is son and lawful heir, through his father, Benjamin Moody, of James Moody, the ancestor, and entitled to a portion of his estate: that Ann Dorsey, late Ann Moody, now a widow, is a sister of the whole blood to James Moody, the ancestor, and entitled to a portion of his estate.

These defendants insist that the complainants have no claim to the right to the estate of James Moody, the ancestor: ought to distribute the same, without delay, among these defendants, and other collateral heirs of the said James, the ancestor, according to law.

And these defendants pray that this answer may be considered in the nature of a cross bill against Northrup, the administrator, and decree over against him for their respective portions of the funds in his hands.

And these defendants pray for such other decree as may be fit and proper, if the court shall take cognizance of the matter in controversy.

They pray for a decree for costs, &c.

DANIEL McALLISTER, (SEAL.)
CATHERINE McALLISTER, (SEAL.)
WILLIAM HARDESTY, (SEAL.)
ANN HARDESTY, (SEAL.)
JOHN L. NEILL, (SEAL.)
SARAH NEILL, (SEAL.)
BENJAMIN W. MOODY, (SEAL.)
ANN MOODY, (SEAL.)
ANN DORSEY, (SEAL.)
MARY MOODY, (SEAL.)

STATE OF KENTUCKY, *Washington County, sct.*

This day personally appeared before me, a justice of the peace in and for the county and State aforesaid, Daniel McAllister and Catherine, his wife, late Moody, William Hardesty and Ann, his wife, late Moody, John L. Neil and Sarah, his wife, late Moody, Benjamin W. Moody and Ann, his wife, late Moody, Ann Dorsey, late Moody, Mary Moody, widow of Thomas Moody, deceased, and made oath that the facts stated in the foregoing answer, so far as stated on their own knowledge, they know to be true; and so far as stated on the knowledge of others, they believe to be true.

Given under my hand and seal, tnis 18th day of August, eighteen hundred and thirty-seven.

JOHN MOORE, *J. P.* [SEAL.]

STATE OF KENTUCKY, *Washington County, sct.*

I, William B. Booher, clerk of the county court for the county of Washington, and State aforesaid, do hereby certify that John Moore, whose name is affixed to the above and foregoing affidavit, is, and was at the time of affixing the same, a justice of the peace for Washington county, duly commissioned and qualified as such, and that all of his official acts are entitled to due faith and credit, as well in as out of courts.

In testimony whereof, I have hereunto set my hand, and caused the seal of my said office to be affixed, at the court-house in [SEAL.] Springfield, this 19th day of August, eighteen hundred and thirty-seven, and the forty-sixth year of the Commonwealth of Kentucky.

W. B. BOOHER, *Clk.*

STATE OF KENTUCKY, *Washington County, sct.*

I, Mordecai Hardin, senior and presiding justice of the Washington county court, do certify that W. B. Booher, whose signature is affixed to the within and foregoing certificate, is the clerk of the Washington county court, and that full faith and credit is due to all his official acts as such, both in and out of this State, and that his said certificate and seal is in due form of law.

Given under my hand, this nineteenth day of August, eighteen hundred and thirty-seven.

MORDECAI HARDIN, *J. P. W. C.*

Whereupon, on motion of the said defendants, by their attorney aforesaid, it is ruled by the court here that the said complainants enter a general replication to all the answers aforesaid of the said defendants, or, in default thereof, that the said bill be dismissed.

Thereupon, the said cause was regularly continued at rules until the fourth Monday of March, eighteen hundred and thirty-eight, when the said complainants, by their solicitor aforesaid, filed the following general replication to the joint answers of D. McAllister and others, to wit:

General Replication to the Answer of D'l McAllister and others.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said joint answers of D. McAllister and others, for replication thereto, say, that they will aver and maintain and prove their said bill to be true, full, and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants, without that, &c.; and these repliants humbly pray, as in and by their said bill they have already prayed; and as to the answer of Henry Northrup, the said parties, by their solicitor aforesaid, file in court here the following agreement.

Cause set for Argument, and General Replication to Answer of Northup.

No. 1.

VAUGHAN, &c., *vs.* HENRY NORTHRUP, &c. } In Chancery.

In the above entitled cause, the clerk will set down for argument so much of the answer of said Northrup as denies the jurisdiction of the circuit court of the District of Columbia in this cause, and will file a general replication to the residue of said answer, as also to the answers of Daniel McAllister and others.

BRENT & BRENT, *for complainants.*

I comsent that so much of the answer of Henry Northrup as denies the jurisdiction of the circuit court of the District of Columbia shall be set down for argument.

RICHARD S. COXE, *for Northup.*

December twelfth, eighteen hundred and thirty-eight.

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their solicitors aforesaid, and by order of the court here, the said cause was regularly continued at rules until the fourth Monday of November, eighteen hundred and thirty-eight, when the said cause was, in pursuance of the above agreement, set for hearing, by consent.

Whereupon, all and singular the premises being by the court here seen and understood, and the said parties, by their solicitors aforesaid, being heard, and after mature deliberation being thereupon had, the said court made the following decree in the premises:

No. 2.

VAUGHAN, and others, *against* HENRY NORTHRUP, and others. } Decree.

So much of the answer filed by Henry Northrup in the above causes as denies the jurisdiction of this court in the premises being set down for argument, and being fully argued and considered, it is thereupon, this twentieth day of December, eighteen hundred and thirty-eight, ordered and decreed that this court has no jurisdiction in this cause, and that the bill of complaint be dismissed.

By order of the Court.

Test: W. BRENT, *Clk.*

DISTRICT OF COLUMBIA, *County of Washington, sct.*

I, William Brent, clerk of the circuit court for the District and county aforesaid, hereby certify, that afterwards, to wit, on the day of , 1839, the said complainant, by his solicitor aforesaid, prayed an appeal from the judgment aforesaid, so as aforesaid rendered, to the Supreme Court of the United States; and it is granted him. Whereupon, the said complainant, by his solicitor aforesaid, files in court here a certain writing obligatory, commonly called an appeal, which being read and heard, and the securities in the said bond being by the court here approved, it is therefore ordered by the said court here that the record and proceedings aforesaid, with all things thereto relating, be transmitted to the said Supreme Court of the United States; and the same are transmitted to the said Court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, this 14th day of October, 1839.

[SEAL.]

W. BRENT, *Clk.*